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Current Topics.

Viscount Craigmyle.

IT was only a few weeks ago that in a note in this column we offered our congratulations to VISCOUNT CRAIGMYLE on the attainment of his eighty-seventh birthday, accompanying these with the hope that length of days might yet be granted to him; but that hope was not destined to be realised, and the melancholy duty now falls to us to lament his loss after a comparatively short illness. In many ways his career has been one of distinction. Of comparatively humble origin, he, in TENNYSON's phrase, "made by force his merit known," first in the school he attended in his native Dunfermline, then at Edinburgh University, where he gained numerous academic honours, then at the Scots Bar to which he was admitted in 1875, almost contemporaneously with ROBERT LOUIS STEVENSON, whom a few years later, with some other members of the Bar who were perspicacious enough to discern the nascent genius of the future novelist and essayist, he supported in his gallant, though unsuccessful, candidature for the chair of constitutional law and history in the University. Slowly at first, but more rapidly later, did the future Viscount, then merely THOMAS SHAW, achieve a practice, being particularly successful in jury trials. In the fullness of time his legal merits were noticed by those in authority, and he was appointed an Advocate Depute, that is, a deputy of the Lord Advocate in the criminal courts; then followed his appointment as Solicitor-General for Scotland and then that of Lord Advocate, beyond which no one while at the Scots Bar can go, the office corresponding in the main to that of Attorney-General in England. In that position and on the Treasury Bench in the House of Commons he added to his already great reputation. In 1909 came his appointment as a Lord of Appeal in Ordinary, in which he did valiant public service. Many notable judgments were delivered by him during his tenure of the post, but probably the one that will be best remembered was that in *Rex* v. *Halliday* [1917] A.C. 260, where he dissented from the majority of his colleagues. The late LORD SUMNER once said that one reads dissenting judgments for edification. One can certainly read LORD SHAW's judgment in the case just referred to for edification, but also accompanied by the wish that it had received the approval of those who constituted the House on that occasion. We have just referred to him as LORD SHAW and that was his title when he was still an active member of the judicial staff of the House of Lords; but when a few years ago he retired from active service he was advanced in the peerage and took the title by which he has been since known, namely, VISCOUNT CRAIGMYLE. His passing makes a conspicuous gap in the ranks of the veterans of the law; but his words abide—those in his judicial pronouncements, those in reminiscent vein where he recorded something of his early days at the Bar, or where he sought to appraise the greatness of JOHN MARSHALL, the great Chief Justice of whom our American cousins are so justly proud.

Solicitors and Divorce Suits.

THE Second Reading of the Marriage Bill in the House of Lords was productive of an interesting debate which exhibited, as was to be expected, a wide divergence of conviction and view among the members of that Chamber. It would be clearly inappropriate for us to comment on the many fundamental issues involved, while the publicity accorded in the daily press renders even a brief indication of the trend of the speeches unnecessary here. Two matters should, however, be shortly alluded to. First, we welcome the statement of the ARCHBISHOP OF CANTERBURY that he could not support the inclusion of insanity among the causes set out in cl. 2 of the Bill as exhibiting the appreciation of a distinction which was referred to some time ago in these pages and appears to have been too little emphasised during the various discussions of the measure. Insanity, Dr. LANG said, was an entirely different matter from any other. That ground of divorce lay not in default but in the misfortune of the person concerned, a misfortune for which that person was in no way to blame. The legal corollaries of such a distinction need not be stressed here. We refer to the second matter with less pleasure. In reference to "hotel bill cases," the Archbishop said: "Parties no longer wishing to live together make an arrangement by which a single act of adultery is committed. A woman asks her husband in this manner to do what is called 'giving her her liberty' and sometimes appeals to a sort of perverted sense of chivalry on his part. Thus this great sin is not here the result of passion, but is regarded simply as a permissible episode in a mutual arrangement; and, as is well known, ample assistance for carrying it out is given by the solicitors concerned." The last words were not allowed to go unchallenged. The EARL OF DROGHEDA expressed himself as glad that Dr. LANG did not add the Bar to the statement that it was notorious that solicitors lent themselves to the practice of collusion. "I could assure the most reverend Primate and the House,"

he said, "that no barrister, whether practising in the Divorce Division or in any other division of the High Court, would present a case without seeing that the most frank disclosure was made to the court. I do not think that I have any right to speak for the solicitors, except that I do not think that there is any member of that profession here. I do not, however, think it is right that that should go from this House as an unchallenged statement. So far as I have observed in my practice at the Bar, no reputable solicitor would lend himself to any practice of the sort. There may be some cases in which a solicitor might do so, but to brand the whole profession as notoriously lending themselves to collusion is in my view most unjust, and I am sure that the most reverend Primate would never wish to be anything like unjust." It is, perhaps, unnecessary for us to add anything further, but it may be suggested that a closer acquaintance with the everyday business of a solicitor's office might have brought home to Dr. LANG a fuller realisation of the very grave penalties which indulgence in such practice as he rightly condemns would involve, and, it may be hoped, a greater appreciation of the standard of decency in the profession. In a letter sent to *The Times*, the Archbishop has since expressed his sincere regret that the above cited words "should have been regarded as casting a reflection upon a profession for which he has the greatest respect."

"Visit England Now . . ."

THE despoliation of the countryside—and means available or devisable to place some check on the process—forms a not inappropriate subject of consideration at a time when many of our readers will be looking forward to their summer vacation. The words at the head of the present paragraph are taken from the eloquent appeal recently made in the House of Commons by Mr. H. G. STRAUSS, who deplored the rapid destruction of urban and rural beauty and went on to suggest the appropriateness of the following slogan, for the information of intending foreign visitors: "Visit England now. No other country is destroying its country beauty so quickly. A visit postponed may be too late." Many passages from the foregoing speech are worthy of quotation *in extenso*, but considerations of space and the fact that many readers will already be acquainted with them, render such a course inappropriate here. It may, however, be recalled that the speaker drew attention to the close relationship between the urban and rural problem—repulsive and unworthy towns being responsible to some extent for the rush to the country, and its consequent indiscriminate plastering with buildings—that he deprecated the cult of the sham antique and the affected avoidance of uniformity, and urged in effect that neither the Restriction of Ribbon Development Act, 1935, nor the Town and Country Planning Act, 1932, were proving adequate to combat the evils they were designed to remedy or prevent. Ribbon building had only been partially checked. The right thing to do was to stop it—not merely to remove the ribbon a little further from the centre of the road; while the latter statute was not acting fast enough to save the beauty of England, and an enormous area was being planned for housing development which, particularly in view of a prospective decline in the population, need not be so planned. England was being destroyed before their eyes and it was the duty of the Minister of Health to tell the House how the Ministry planned to stop it.

Remedy by Statute.

FEW will be found to quarrel with the substance of this indictment. But the devising of an appropriate remedy, whether by more vigorous administrative measures or by legislation, raises a number of difficult questions, not the least of them being the problem of compensation if the rights of landowners are not to be infringed. Moreover, the application of coercive measures in the legislative field which was attempted some years ago and has not since been repeated points to the difficulty of dealing with the position by Act of Parliament. The Housing, Town Planning, etc., Act of 1909, the precursor of modern legislation on the subject, was naturally enough of an enabling character, but the compulsory provisions of the Housing, etc., Act, 1923, which required the council of every borough and urban district with a population of over 20,000 to prepare a planning scheme and submit it to the Minister of Health, and were repeated in the Town Planning Act, 1925, find no place in the Town and Country Planning Act, 1932, notwithstanding the extension of time for complying with this statutory requirement contained in the Local Government Act, 1929. In other respects the Act of 1932 marks a real advance—notably in the inclusion of rural localities in planning schemes, in the increased opportunities afforded to local authorities for co-ordinating their efforts in this direction, and in the extension of the principle of compulsory purchase in relation to the protection of rural amenities. Indeed, it is difficult to see how the existing method of legislative control could be substantially altered and what practical alternative there is to the existing facilities for the preparation of an overriding scheme to which landowners must conform in the development of their property, though doubtless there is room for detailed improvement. It is of some interest to note in this connection that Mr. S. D. STUDD, in the course of a presidential address recently delivered at the sixteenth annual general meeting of the Building Surveyors' Association, regarded the Act of 1932 as at the moment the small acorn from which the oak would grow. Much pruning might have to be done during the years of growth, but, he said, it was certain that, with the goodwill and co-operation of those whose duty it was to administer the Act, this country would ultimately become a healthier and happier place in which to dwell. It appears to us that one of the principal difficulties in the way of the adoption of an optimistic standpoint is that the harm will in many cases have been done before the remedy can be applied. Legislative and administrative effort are to be welcomed in this field in so far as they do not unduly hamper the owner in the enjoyment—which must, to some extent, involve the possibility of disfigurement—of his property. Tribute should be paid to the societies and public bodies which have the welfare of the countryside as their object and to landowners who, often at personal cost, resist the oncoming tide, but it is doubtful if efforts such as these will be sufficient to make headway against the forces of inertia and indifference, upon which the destroyer of the countryside battens, or will in the long run counteract the tendency for a people to inherit the countryside it deserves.

Reports of Matrimonial Cases.

MR. CLAUD MULLINS, the South-Western Police Court magistrate, alluded in the course of a recent speech to the evils attendant on the unrestricted report of matrimonial cases which it is, of course, one of the objects of the Summary Procedure (Domestic Proceedings) Bill to remedy. It may be remembered that, as was recorded in these columns, the same matter formed the subject of LORD MERTHYR'S speech on the second reading of that Bill in the House of Lords at the beginning of last month. Mr. MULLINS described it as "an outrage" that the Press was free not only to report proceedings in the matrimonial court but to follow up the hearing with an interview with the parties. The learned magistrate mentioned one case in which extracts had been published from a private dairy kept by the husband about his wife. Every responsible element in journalism, it was said, denounced that sort of thing, but it would only be stopped by legislation. Reference was made to the system adopted at the South-Western Police Court of setting aside an afternoon once a week for matrimonial cases which were heard in a small informal court, and it was observed that one of the reasons for doing this was that there was no room for prying people who wanted to hear all about the matrimonial troubles of

their neighbours, so that they could tell them all over again to all the people living in their street. The position of those whose matrimonial troubles have often necessarily to be ventilated in open court was contrasted with that of the paying client. In the latter case, investigation always preceded litigation and many people who went into their solicitor's office intending to get a divorce ended by taking no further steps. But there was a large majority who had not the means to pay a solicitor to give his time thoroughly to investigate their matrimonial problems. Restrictive measures against facilities for proving fair and accurate reports of legal proceedings are ordinarily to be deprecated, notwithstanding the inherent opportunities of abuse and the ensuing inconvenience, if nothing more, to the parties concerned. But there are exceptions; and it appears to us that as good a case, if not better, can be made out for the prohibition of unrestricted ventilation of the matrimonial troubles of those who have recourse to the police courts for relief as for the existing restrictions in regard to the reporting of divorce cases in the High Court; and that the provisions of the Summary Procedure (Domestic Proceedings) Bill in this respect are to be welcomed accordingly.

Recent Decisions.

In *Cahill* v. *West Ham Corporation* (*The Times*, 25th June), PORTER, J., while expressing sympathy with the plaintiff whose arm was cut by going through a glass partition in a school classroom, held that schoolmasters were not guilty of negligence in organising in a classroom a relay race, in taking part in which the plaintiff sustained his injury.

In *Moss' Empires, Ltd.* v. *Commissioners of Inland Revenue* (*The Times*, 25th June), the House of Lords affirmed a decision of the First Division of the Court of Session, as the Court of Exchequer in Scotland, to the effect that payments made by guarantors under an agreement for ensuring the payment for a period of five years of a fixed dividend of 7½ per cent. per annum on the ordinary shares of a theatre company were, notwithstanding their variable and contingent character, "annual payments charged with tax under Schedule D" within the meaning of para. (1) of r. 21 of the General Rules applicable to all Schedules of the Income Tax Act, 1918. It was accordingly the duty of the guarantors in making the said payments, to deduct therefrom income-tax at the current rate and to account therefor to the Inland Revenue Commissioners.

In *Whelan and Others* v. *Billingham Urban District Council* (*The Times*, 25th June), CLAUSON, J., held that the plaintiffs who were employed by the defendants on fire brigade duties, but, when not so engaged, were employed by the defendants on other duties for which they received additional payment, were not professional firemen within the Fire Brigade Pensions Acts, 1925 and 1929. Section 23 of the former Act defines "professional firemen" as "any member of a fire brigade maintained by a local authority who is wholly and permanently employed on fire brigade duties, and to whom the Police Pensions Act, 1921, does not apply," and the learned judge intimated that it was impossible to treat the plaintiffs as coming within the terms of that definition.

In *Rose* v. *Ford* (*The Times*, 26th June), the House of Lords held that the right vested in a living person to claim damages in respect of the shortening of the normal expectation of life as a result of personal injuries attributable to a defendant's negligence (*Flint* v. *Lovell* [1935] K.B. 354), passed to personal representatives under the Law Reform (Miscellaneous Provisions) Act, 1934. At the original hearing HUMPHREYS, J., had awarded the appellant, whose daughter had died as the result of injuries sustained in a motor accident, £300 damages under the Fatal Accidents Acts, 1846–1908, and, as damages recoverable on behalf of his daughter's estate, £29 2s. 11d. special damages and £500 for the loss of her leg which was amputated a few days before she died. The Court of Appeal reduced the last figure to £22 and held that if damages were recoverable for loss of expectation of life the appropriate amount was £1,000, but (SLESSER and GREENE, L.JJ., GREER, L.J., dissenting) that damages were not recoverable under this head because such a claim was in substance one for the loss of her life. The House of Lords ordered judgment to be entered for the plaintiff for £1,351 2s. 11d. made up of the sums £300, £29 2s. 11d., £22 and £1,000, previously referred to. LORD ATKIN stated that he saw no reason for extending the illogical doctrine of *Admiralty Commissioners* v. *S.S. Amerika* [1917] A.C. 38, to any case where it did not clearly apply.

In *Philadelphia National Bank* v. *Price* (*The Times*, 26th June), PORTER, J., held, on the construction of a policy providing that the insurance was only to pay claims for the excess of the ultimate net loss of a named sum "by each and every loss and occurrence," that losses sustained by the plaintiffs as a result of frauds perpetuated by a New York coal merchant and a company of which he was president and the only shareholder were separate events and the learned judge declined to accede to the argument that the loss on loans granted daily—each loss being less than the named sum—should be treated as one ultimate net loss.

In *Ellis* v. *Fulham Borough Council* (*The Times*, 26th June), the Court of Appeal upheld a decision of GREAVES-LORD, J., 81 SOL. J. 140, who held that the defendants were liable in damages for injuries sustained by the infant plaintiff as the result of cutting his foot on a piece of glass in a paddle pool provided in a park owned and occupied by the defendants, but decided the question on the footing that the child was a licensee and not, as the learned judge thought, an invitee. *Purkis* v. *Walthamstow Borough Council*, 151 L.T. 30, applied. See also *Hastie* v. *Edinburgh Magistrates* [1907] S.C. 1102; *Glasgow Corporation* v. *Taylor* [1922] 1 A.C. 44, and *Robert Addie and Sons (Collieries) Ltd.* v. *Dumbreck* [1929] A.C. 358.

In *Fender* v. *St. John-Mildmay* (p. 549 of this issue), the House of Lords (LORDS ATKIN, THANKERTON and WRIGHT), LORDS RUSSELL OF KILLOWEN and ROCHE dissenting, reversed decisions of HAWKE, J., and the Court of Appeal (SLESSER and GREENE, L.JJ., GREER L.J., dissenting) (79 SOL. J. 419, 879), and held that a promise made by a man, against whom a decree *nisi* dissolving his subsisting marriage had been pronounced, to marry a third party after the decree had been made absolute, was not void on grounds of public policy: *Spiers* v. *Hunt* [1908] 1 K.B. 720 and *Wilson* v. *Carnley* [1908] 1 K.B. 729, distinguished.

In *Milk Marketing Board* v. *C. Warman and Sons* (*The Times*, 29th June), CHARLES, J., held that the plaintiffs were entitled to a sum claimed as the payment of levies under para. 65 (1) of the Milk Marketing Scheme, 1933, against a registered producer of milk to whom a licence under the scheme had been granted. The learned judge negatived defences that the plaintiffs, contrary to an alleged representation in an explanatory pamphlet and in breach of warranty, had failed to take any or sufficient steps to prevent undercutting by the defendant's competitors, and held that the plaintiffs' failure to stop undercutting was not a breach of duty on which the defendant could rely by way of counter-claim.

In *Pitcher* v. *Martin and Another* (*The Times*, 30th June), ATKINSON, J., held that a defendant who, while attending to a bandage on her dog in a street, had, in allowing the animal to escape with the lead attached, been negligent, and awarded the plaintiff damages for personal injuries sustained as a result of the lead getting round her legs and throwing her to the ground.

In *Lockton, W., deceased* (*The Times*, 30th June), Sir BOYD MERRIMAN, P., admitted to probate a will which had been duly executed but which had been cut into fourteen pieces and fastened together with tape. The learned President commented on the strangeness of the occurrence, but observed that he could not assume, if the testator cut his will about and put it together again, that he intended to destroy it.

The Memorandum Required by the Moneylenders Act.

THERE is a question of considerable importance in relation to the note or memorandum of a money-lending contract required by s. 6 of the Moneylenders Act, 1927, which is left uncovered by any English authority. The problem which I propose to discuss is shortly as follows : —

If, in a money-lending contract, a document is signed by the borrower which contains all the terms of the contract, but which is in form a security, e.g., a promissory note, will this document satisfy the requirements of s. 6 of the Act or is a separate document necessary to constitute a valid memorandum ? The question is of the utmost importance and not infrequently arises in practice. Many moneylenders not experienced in the law, are content to allow the protection of their rights to rest solely upon a promissory note or other security that the borrower may have given (such security setting out the date on which the loan is made, the amount of principal of the loan, etc.), in confident expectation that this also constitutes a sufficient memorandum.

The further question as to what extent, if a security is given, the terms of the security must be embodied in the memorandum as being part of the terms of the contract, is closely akin to the problem set out, but as it involves different considerations I do not propose to discuss it here.

The position arose in the Scottish case of *Colin Campbell Ltd.* v. *Christie and Another* (1935), S.L.T. (Sheriff Court Reports). In this case the plaintiffs brought an action against the defendants to recover the balance of a loan made by the plaintiffs to the defendants. The plaintiffs took a promissory note from the defendants for £30. There was no other document relied upon by the plaintiffs. One of the defences raised was, that as no note or memorandum of the contract had been signed by the defendants, and as no copy of such memorandum had been delivered to them as required by the Act, the contract was unenforceable. The plaintiffs sought to rely on the promissory note as a valid memorandum. In his judgment, Sheriff Substitute W. Boyd Berry said : " I think that the defendants are entitled to claim that the document is to be regarded not as a note or memorandum of the contract but as a promissory note." It would follow from this, as the document was treated by the judge as a promissory note and not as a memorandum, that therefore the contract was unenforceable, there being no other document which could serve as the necessary memorandum. His decision, however, was not ultimately made on these grounds, it being found that even if the promissory note were treated as a memorandum it did not contain all the terms of the contract. The judge based his decision on the point under discussion mainly on the judgment of Pollock, B., and Hawkins, J., in *Mortgage Insurance Corporation v. Commissioners of Inland Revenue* (1887), 20 Q.B.D. In his judgment in this case, Pollock, B., said (and this is the passage upon which it appears that the Scottish Judge relied) : " I think it is clear that for the purposes of the Stamp Acts it cannot have been intended that a document should be treated as in part a promissory note and in part an agreement. It must be either one or the other." It will be observed, however, that this is a decision for the purposes of the Stamp Acts, and it does not necessarily decide that a document is either a promissory note or an agreement, or both, for all purposes or for the purposes of any other Act. The case was a test case and the point was merely that a document was sufficiently stamped with a sixpenny stamp as an agreement, although it contained, *inter alia*, a promise to repay, and that an *ad valorem* stamp of one shilling as on a promissory note was unnecessary. The learned judge in *Colin Campbell's Case, supra*, naturally gave great weight to this decision, but it may be doubted whether his attention was sufficiently drawn to its limited application.

If the English Court follows the view expressed by the Scottish judge the matter is concluded. As it is far from certain, in the circumstances, that the Scottish decision will carry great weight, it is necessary to look at the wording of the Moneylenders Act itself.

Section 6 (1) of the Act provides, among other things, that no contract for the repayment of money lent, and no security given in respect of such a loan, shall be enforceable unless a note or memorandum of the contract is made and signed by the borrower, and a copy of it sent to the borrower within seven days of the transaction. The section then goes on : " and no such contract or security shall be enforceable if it is proved that the note or memorandum aforesaid was not signed by the borrower before the money was lent or before the security was given as the case may be." At all times, statutes passed for the protection of a particular class of the community have been strictly construed. The Moneylenders Act provides no exception to this generality, and is construed very strictly by the courts. The fact that the Act states that if a security is given the memorandum must be signed before such security is given, seems to point to the contemplation of two documents by the statute. The question is when is the security given ? If the giving of a security means the handing over of a document, then a document which the parties intend to be both memorandum and promissory note, will in fact be signed before it is handed over. This being substantially in accordance with the demands of the section it will be open to a court to hold that one document will suffice. If the giving of a security means the actual signing of the document which constitutes the security, then it is physically impossible for one document to satisfy the requirements of the Act, the signing of the memorandum and giving of the security being contemporaneous.

The matter is one of considerable practical importance from the point of view of the moneylender, who apparently does not always realise the difficulties into which he may put himself by accepting a promissory note in the form indicated above, without insisting on the signing of a separate memorandum.

At first sight the view that one document alone, if in the proper form, will suffice, has much to commend it, and the practice would certainly be convenient. But, as I have briefly indicated, the matter is, when examined, one of extreme doubt and difficulty, and until there is a binding decision of the English Court upon the point, the only safe course for moneylenders and those advising them, is to have the security and the memorandum in separate documents.

Motive and Nuisance to Neighbour's Property.

IN this article we propose considering how far the question of motive or malice is material in considering whether or not an act done on one's own property causing annoyance or disturbance to his neighbour constitutes a nuisance.

As regards acts strictly confined to his own land, a man may be as selfish, churlish, grasping and unscrupulous as he pleases. In *Mayor, &c. of Bradford* v. *Pickles* [1895] A.C. 587, where the Corporation of Bradford sought to restrain the defendant, Mr. Pickles, from sinking a shaft on his land and which was done with the express purpose of drawing away water which would otherwise have come into the plaintiff's reservoir, it was held that as the defendant had a perfect right to sink the shaft, the motive of the defendant in drawing away the water from the plaintiffs' land was immaterial, Lord Halsbury stating : " This is not a case in which the state of mind of the person doing the act can affect the right to do it." It was a " lawful act, however ill the motive may be, he had a right to do it. If it was an unlawful act, however

good his motive might be, he would have no right to do it. Motives and intentions in such a question as is now before your lordships seem to me to be absolutely irrelevant."

The case of *Ibbotson* v. *Peat*, 3 H. & C.R. 644, shows that acts committed by an owner on his own land may even be unscrupulous. So that where a person enticed away grouse from his neighbour's land by putting down raisins with the express purpose of luring them on to his own land, and the owner of the land from which the birds were enticed having attempted to frighten them back again by explosive sounds, was held not to be entitled to do so, Bramwell, B., stating: "There is nothing in point of law to prevent the plaintiff from doing that which the plea alleges he has done. I say 'in point of law,' because it cannot be contended for a moment that any action would lie against the plaintiff. As to the propriety of such conduct between gentlemen and neighbours I say nothing. Where a person's game is attracted from his land, he ought to offer them stronger inducements to return to it."

As regards acts not strictly confined to his own land, it is important to remember that a neighbour has no such right and should he cause annoyance or inconvenience to the occupier of adjoining premises by any act, such as transmitting or diffusing noise, smells, heat, fumes, or any other act which may cause him inconvenience, he may be liable to an action in damages and to an injunction restraining him from committing such a nuisance, so that in *Wood* v. *Conway Corporation* [1914] Ch. 47, C.A., where the defendants, who were owners of some gasworks, transmitted fumes and smoke across the plaintiff's plantation which adjoined the defendants' land and which destroyed the tops of plaintiff's trees, was held to constitute a nuisance and an injunction was granted restraining them from so doing. And in *Sturges* v. *Bridgman*, 11 Ch. D. 852, where a confectioner used a pestle and mortar, the noise and vibration of which caused annoyance to a physician who had recently erected a consulting room close to where the noise came from, an injunction was granted restraining the confectioner from causing the noise and vibration, notwithstanding the fact that the confectioner had used the pestle and mortar for over twenty years and that no complaints had been previously made.

Although this is the law, a neighbour has for the sake of public convenience and utility a qualified privilege to do such acts as are necessary for the common and ordinary use of his land and his house, which rule has been described by Bramwell, J., in *Bamford* v. *Turnley*, 3 B. & S. Repts. 84, as "a rule of give and take, live and let live."

In *Moy* v. *Stoop*, 25 T.L.R. 262, it was held that the use of a house as a day nursery with crying children did not amount to a nuisance. Channel, J., stating it was an illustration of a state of things which made a house less valuable than before without creating a nuisance.

In the same way that malice will vitiate privilege in libel and slander, so will it do so in the case of qualified privilege in nuisance. So that in *Christie* v. *Davey* [1893] 1 Ch. 316, the giving of musical lessons by a teacher of music, the lessons extending over seventeen hours in the week, together with evening musical performances and musical parties as late as eleven at night, was held not to constitute a nuisance, but as the court was satisfied that some of the noises on the musical instruments had been made maliciously for the express purpose of annoying the plaintiff, an injunction was granted restraining them, North, J., stating: "In my opinion the noises which were made in the defendant's house were not of a legitimate kind . . . I am satisfied that they were made deliberately and maliciously for the purpose of annoying the plaintiff. If what had taken place had occurred between two sets of persons both perfectly innocent, I should have taken an entirely different view of the case. But I am persuaded that what was done by the defendant was done only for the purpose of annoyance, and in my opinion it was not a legitimate use of the defendant's house to use it for the purpose of vexing and annoying his neighbours."

In the recent case of *Hollywood Silver Fox Farm, Ltd.* v. *Emmett* [1936] 2 K.B. 468, where the plaintiff company carried on the breeding of silver foxes on their land and the defendant, with the express purpose of interfering with the breeding of the foxes, caused his son to discharge guns on his own land and as near as possible to breeding pens belonging to plaintiffs, it was held that the plaintiff was entitled to an injunction and damages, notwithstanding the fact that the firing took place on the defendant's land over which he was entitled to shoot, Macnaghten, J., quoting with approval a dictum of Lord Watson in *Allen* v. *Flood* [1898] 1 A.C. 101, who discussed fully the case of *Keeble* v. *Hickeringill*, 11 East 574, and stated: "No proprietor has an absolute right to create noises upon his own land, because any right which the law gives him is qualified by the condition that it must not be exercised to the nuisance of his neighbours or of the public. If he violates that condition he commits a legal wrong, and if he does so intentionally he is guilty of a malicious wrong in its strict legal sense."

In conclusion, it will be seen from the foregoing remarks that although motive is irrelevant as regards acts strictly confined to one's own land and in certain cases to acts not confined to one's own land, it may be most material when one has to consider the class of case that comes under the category of qualified privilege above referred to.

Company Law and Practice.

Provisions of the Companies Act, 1929, and the Rules pursuant thereto relating to Advertisements.

I PROPOSE in this article to discuss the various advertisements that may be inserted or that have to be inserted in the *Gazette* or in newspapers by different people having to do with the affairs of limited companies. It is obviously a matter of considerable importance to be conversant with the various types of advertisement that may be made and that are made compulsorily, not merely from the point of view of those giving the notice, but from the point of view of knowing what advertisements may be expected to be found in the newspapers and the *Gazette*.

Where the court confirms an alteration of the provisions of a company's memorandum of association under s. 5, the court may, if it thinks fit, require advertisement of any order confirming such alteration: *Copper Mines Tinplate Co.* [1897] W.N. 20, in which case the court directed the order to be advertised in the same way as the petition.

In various cases there are provisions that notices required to be given to certain classes of persons may be given by means of advertisements. In the case of notices required to be given in connection with arrangements under s. 153, however, and in the case of debentures payable "to bearer or to registered holder," notice as regards bearer-debentures can only be given by advertisement, and the case of *The Mercantile Investment and International Co. of Mexico* [1893] 1 Ch. 484n is authority for the proposition that in the absence of provisions in the deed relating to notice, notice by advertisement, coupled with notice by circular for all debenture-holders whose names are known, is sufficient.

It is, I think, unnecessary to do more than remind my readers of the permissive provisions in Table A as to notice by advertisement to members with no registered address. It should, however, be noted in passing that there are exactly similar provisions in Table C. As is well known, prospectuses may be advertised in a modified form.

With regard to the reduction of the capital of a company, s. 58, sub-s. (3), provides that notice of the registration of

the order confirming a reduction and the minute approved by the court shall be published in such manner as the court may direct. The court cannot dispense with this notice, but it may order it to be published in a short form. It is the notice that must be published and not a copy of the order.

There are other provisions as to advertisement in the case of a reduction of capital contained in the Rules of the Supreme Court, Ord. 53, r. 11 (*e*), provides that notice of the presentation of the petition, of the effect of the order directing the inquiry as to creditors, and of the list of creditors shall, after the filing of the affidavit as to creditors, be published at such times and in such newspapers as the judge shall direct. Every such notice must state the amount of the proposed reduction, and the places where the list of creditors may be inspected, and the time limited for additions being made to the list. Sub-rule (*l*) of this order provides that, before the hearing of the petition, notices stating the day on which it is appointed to be heard shall be published at such times and in such newspapers as the judge shall direct. The advertisement of the presentation of the petition may, in certain circumstances, be dispensed with, *e.g.*, in the case of *The London & City Land & Building Co.* (1885), W.N. 137, where Chitty, J., said that this was a question in deciding where, the court ought to exercise its discretion in each case. An example of a case where it was not dispensed with is *Tambracherry Estates Co.*, 29 Ch. D. 683, where the Court of Appeal held that where the judge had decided that the petition ought to be advertised, the Court of Appeal would not interfere.

Rules of a somewhat different nature obtain in the case of a winding-up petition. Rule 27 of the Companies (Winding Up) Rules, 1929, provides that every petition for winding up a company must be advertised seven clear days, which may be counted during the vacation before the hearing. The petition is not invalidated by reason of its appearing on the same day as the presentation of the petition and thereby appearing shortly before the presentation of the petition: see *Cork & Youghal Railway Co.*, 14 L.T. 750; (1866), W.N. 279. The advertisement must appear once at least in the *London Gazette*; in the case of a company whose registered office, or of those whose principal place of business is or was within ten miles of the principal entrance of the Royal Courts of Justice, once at least in one London daily morning newspaper, or as the court may direct, and in the case of companies not residing in the said circle, in a local newspaper circulating in the district of the company's registered office or principal place of business if it has no registered office, or in such newspaper as the court may direct. Proper advertisement of the petition is notice to all the world of the fact of its presentation.

On a petition for a compulsory winding-up order, an order to constitute a voluntary winding up under supervision may apparently be made by treating the petition as amended by merely stating the resolution for the voluntary liquidation and asking for an order to wind up under supervision. Formerly, this course was occasionally adopted, but the more usual course was for the court to require amendment of the petition and readvertisement and this is now the practice: [1902] W.N. 77.

Where the petition is successful and an order is made, it must be advertised, but it would, I think, be convenient to deal with the various other advertisements described by the winding-up rules together, and before doing so it should be observed that where, under s. 238, in the case of a creditors' voluntary winding up, the company calls the meeting of creditors directed by the section, it must cause notice of the meeting to be advertised once in the *Gazette* and once at least in two local newspapers circulating in the district where the registered office or principal place of business is situate.

Apart from the advertisement of a winding-up petition directed to be made by r. 27 of the Winding Up Rules above referred to, those rules contain the following provisions as to the giving of notices. By r. 41, where an order is made that a company be wound up or for the appointment of a provisional liquidator, the official receiver is to give notice of the order to the Board of Trade who are forthwith to cause the notice to be gazetted. The official receiver is also to send notice of the order to such local paper as the Board may from time to time direct or in default of that direction, as he may select. Sub-section (2) of the rule provides that a petitioner must cause to be advertised once in the *London Gazette* an order for the winding up of a company, subject to the supervision of the court.

By r. 56, if the court on the application of the official receiver fixes a time and place for considering the resolution and determinations of the first meetings of the creditors and contributories in a winding up by the court, such time and place shall be advertised by the official receiver as the court shall direct, but so that it is published at least once seven clear days before the time fixed. Further, the Board of Trade are required to cause the appointment of a liquidator to be gazetted, and any appointment of a liquidator or a committee of inspection must be advertised by the liquidator as the court directs as soon as the liquidator has given the required security. The time and place appointed for holding a public examination of any person must be advertised by the official receiver in newspapers directed by the Board of Trade, or, if none are directed, as he shall select: r. 63. Notice must also, by the provisions of that rule, be forwarded to the Board of Trade, who shall gazette it. Unless the court otherwise orders, a notice published in the *Gazette* is sufficient advertisement of the time appointed for any adjourned examination.

Where a liquidator is intending to make a call, and for that purpose to call a meeting of his committee of inspection, such intentions must be advertised once at least in a London newspaper, or if the proceedings are not in the High Court, in a paper circulating in the district of the court in which the proceedings are pending: r. 84. An application to the court for leave to make a call may be directed to be advertised by the court: r. 85. The resolution or order allowing the call need not be advertised unless the court so directs: r. 87. Notice by the liquidator to creditors to prove in a winding up is to be advertised by him in such newspaper as he shall consider convenient: r. 104.

Then follow one or two miscellaneous observations on this rather arid topic which I think it may be useful to make. In the first place, it must always be borne in mind that it is rare that the kinds of advertisement referred to in this article do away with the necessity of giving proper notice personally. Care must be taken to see that the name of the company is properly stated in the advertisement, or the provisions of s. 93 (3) (*b*) will be contravened and officers of the company or other persons on its behalf will be rendered liable to the penalties imposed by that section. A very insignificant error in the name of the company in the advertisement of a winding-up petition will not invalidate it, but the substitution of "City & County Banking Co." for "City & County Bank" did invalidate the advertisement. Nor should a winding-up petition be advertised in too great detail, for if it charges fraud against the directors this will be contempt of court: *Cheltenham Carriage Co.*, 8 Eq. 580. The effect of the advertisement of a winding-up order is notice of the order to the wide world including the employees of a company and operates as notice to them to terminate their employment. In ascertaining whether notice which has been given by advertisement is sufficiently long, the notice is taken as being given on the day the advertisement appears.

A Conveyancer's Diary.

Endorsed Receipts on Mortgages where Surety joins to mortgage his own property.

A somewhat interesting point has come to my notice with regard to the effect of receipts endorsed upon mortgages and operating as reconveyances or transfers under s. 115 of the L.P.A., 1925, where a surety has joined in the mortgage to mortgage his own property as further security for the mortgage debt.

The question might arise when, after the mortgage debt has been discharged, the surety comes to dispose of his property.

The case I have in mind is where there has been such a mortgage with a surety joining to mortgage his own property, and there has been an endorsed receipt stating that the debt has been paid by the principal debtor. In that case the receipt might operate as a transfer to the principal debtor of the mortgage by the surety and the purchaser from the surety would want to know whether that was so or not.

It is necessary to consider carefully what s. 115 enacted and what the effect of it really is.

Sub-section (1) enacts :—

> "A receipt endorsed on, written at the foot of, or annexed to, a mortgage for all money thereby secured, which states the name of the person who pays the money and is executed by the chargee by way of legal mortgage or the person in whom the mortgaged property is vested and who is legally entitled to give a receipt for the mortgage money shall operate, without any reconveyance, surrender, or release."

In effect as a discharge of the mortgage.

It is important to note the words, "which states the name of the person who pays the money," which apply to the whole of the section, so that the section does not apply at all where the name of the person paying is not stated.

Then sub-s. (2) provides :— .

> "Provided that, where by the receipt the money appears to have been paid by a person who is not entitled to the immediate equity of redemption, the receipt shall operate as if the benefit of the mortgage had by deed been transferred to him ; unless—
>
> "(*a*) it is otherwise expressly provided ; or
>
> "(*b*) the mortgage is paid off out of capital money or other money in the hands of a personal representative or trustee properly applicable for the discharge of the mortgage, and it is not expressly provided that the receipt is to operate as a transfer."

So far, then, the position in the case which I have mentioned would be, that where the mortgage money is stated to be paid by the principal debtor, the receipt could operate as a transfer of the mortgage given by the surety to the principal debtor, unless the receipt expressly provides otherwise.

I think that it has often happened (I know that it has occurred on some occasions) that receipts in such cases have been given stating (as the fact was) that the money was paid by the principal debtor without any express provision that the receipt was not to operate as a transfer of the mortgage by the surety.

There is, however, sub-s. (3) to be considered. That sub-section enacts :—

> "Nothing in this section confers on a mortgagor a right to keep alive a mortgage paid off by him, so as to affect prejudicially any subsequent incumbrances ; *and where there is no right to keep the mortgage alive, the receipt does not operate as a transfer.*"

The last sentence, which I have italicised, is the important part of the sub-section for the present purpose.

It follows, that in the ordinary case of a mortgage by a principal debtor with a party joining to mortgage his own property as further security, and there is an endorsed receipt stating that the mortgage money has been paid by the principal debtor, then the receipt will not operate as a transfer as there is not, ordinarily, any right on the part of the principal debtor to keep the surety's mortgage alive.

That is clear enough, but it hardly disposes of the question which I am considering. When the surety comes to deal with his property formerly subject to the mortgage, how is a purchaser from him to know that in fact there was no right as between the person appearing to be the principal debtor and the person appearing to be the surety, for the former to keep alive for his benefit the mortgage by the latter ? Is the purchaser to assume that such was not the case ? I hardly think so.

It may well be that, in fact, as between themselves the position is the reverse of what appears by the mortgage. The person appearing to be the principal debtor may, in fact, be the surety and *vice versa*.

That would not be a very unusual state of things. As an illustration of this, see *Liquidators of Overend, Gurney & Co.* v. *Liquidators of Oriental Financial Corporation* (1874), L.R. 7 H.L. 348. The position of the parties might even be changed after the sale of the mortgage. Thus, for example, one of several principal debtors at the date of the mortgage might by some arrangement between themselves become a surety (cf. *Rouse* v. *Bradford Banking Co.* [1894] A.C. 586).

There is another possibility. The mortgage may (properly or improperly) have been discharged by the principal debtor out of trust funds, e.g., out of moneys placed in his hands by, say, a relative, on the terms that the debt and the securities for the same shall belong to or be held in trust for such relative. In cases of that kind the right to keep the surety's mortgage alive might exist. Other instances could no doubt be given.

Doubtless, if the surety had the mortgage and the title deeds in his possession that would be strong evidence that there was no right to keep the mortgage alive, but I suggest that even then it would not be safe for a purchaser from the surety to assume that the endorsed receipt did not operate as a transfer. The purchaser would, I think, have the right to inquire and ought to inquire of the person who paid off the mortgage debt whether in fact there was any right to have the mortgage kept alive and an admission (preferably under seal) that there was no such right obtained from him. It is obvious that all this would mean expense and delay, even if it could be done.

All this goes to show how necessary it is in cases where a person who appears to be a surety joins in a mortgage to charge his own property, and the mortgage is paid off by the person who appears to be the principal debtor, to insert in the receipt a statement that the receipt is not to operate as a transfer. If this were done in all cases where there did not in fact exist any right to keep alive the mortgage on the surety's property, the difficulties which I have pointed out would be avoided.

I cannot help thinking that it would have been much better if the Act had provided that where the mortgage debt is discharged by some person not being entitled to the equity of redemption, the receipt is to operate as a transfer, if so expressly stated but not otherwise, instead of the provision being as it is. An express provision to that effect would not in such a case be so likely to be omitted by oversight as a provision that the receipt should not so operate. That, at any rate, seems to me to be so. It would be natural enough for anyone who had not this point in mind when drafting the receipt simply to state who in fact paid the money, since the statement would be quite correct. A draftsman would not be so likely to omit a statement that the receipt was to act as a transfer where that was the intention.

The next General Quarter Sessions for the Borough of Stamford will be held on Wednesday, 28th July, at 1130 a.m.

Landlord and Tenant Notebook.

Tenant's Remedies for Innocent Misrepresentation.

In the course of last week's article, I discussed the rights which might be brought into being by representations made by an intending lessor which proved to be ill-founded, notably such representations as related to the fitness of the premises negotiated for or the prospect of the tenant being able to carry on his particular business thereon without infringing the rights of third parties. It was shown that unless a representation amounted to a warranty collateral to the lease, or unless the lease contained words amounting to a covenant, no rights arose. When they do arise, the question of remedies assumes importance.

The facts may be such that the disappointed tenant might well be appeased by the payment of a sum of money. In the case of a misrepresentation as to the state of the drains, which is a common example, it may suit the tenant to be compensated in cash and to continue occupation. But when he finds that a superior landlord is able to prevent him from carrying on business, it is likely that, unless or even if the head lease be forfeited and the underlease thus terminated, he will feel that rescission is the only just remedy. But if he does so feel, he will have to be told that in the case of a lease under seal and merely innocent misrepresentation, that remedy is not available.

It is true that of recent years the status of the deed has lost some of its erstwhile importance. Until the decision in *Craddock Bros.* v. *Hunt* [1923] 2 Ch. 136, C.A., it was, to say the least of it, very much open to doubt whether mutual mistake would entitle a party to a deed to rectification; that authority decided, in a case in which the mistake had first appeared in the written agreement and not first in the deed, that it did. Another very plausible fallacy, that a document under seal could not be varied otherwise than by a similar instrument, was exploded by the learned judge of the City of London Court, who was upheld by the Divisional Court, in *Berry* v. *Berry* [1929] 2 K.B. 316, effect being given to an unsealed agreement reducing the amounts payable under a sealed deed of separation.

These affronts to the caste have not, however, affected the status of the deed made in circumstances of innocent misrepresentation, and in the several cases referred to in last week's "Notebook" few attempts to obtain rescission were recorded, and none succeeded.

The law must still be taken to be that laid down in *Legge* v. *Croker* (1811), 1 B. & B. 506. The plaintiff in that case, when taking a country house from the defendant, had made careful enquiries of him as to the existence of a right of way, and the defendant had assured him verbally and in writing that while there had been a way it had been stopped by Quarter Sessions; but this statement was not inserted in the lease. The plaintiff having built a wall across the road was indicted and ultimately (the indictment having been removed by certiorari to the King's Bench Division) convicted, the defendant assisting him in his defence. Suing for a declaration that the lease was void, he was told that if the misrepresentation had been wilful that relief might have been available, "but where the parties have expressed their meaning by a lease that has been, with due deliberation, executed; and where there is no wilful misrepresentation, nor any mistake, in omitting to introduce a covenant respecting this right of way into the deed, it would be very dangerous to correct the deed upon such slight grounds."

A strenuous effort to get round this rule was made in *Angel* v. *Jay* [1911] 1 K.B. 666, when the tenant's counsel persuaded a county court to rescind an executed lease on the ground of misrepresentation as to the sanitary condition of the premises. The argument, as set forth in the report of the appeal, was that a lease, unlike a conveyance of a fee simple, created recurrent obligations and could therefore be treated as an executory contract; but the distinction was not accepted by the Divisional Court, who allowed the landlord's appeal.

If a tenant's eyes be opened before he executes, or at all events, accepts, a lease, the remedy of rescission is available. The best authority on this is not a landlord and tenant case, but one which arose out of an agreement for the sale of a solicitor's practice, the profits of which had been exaggerated by the vendor: *Redmayne* v. *Hurd* (1881), 20 Ch. D. 1, C.A.

A party induced to enter into an executory agreement by innocent misrepresentation may, if the misrepresentation amounts to a warranty, have a valid claim for damages; but it would seem that if he asks for rescission, damages cannot be awarded. In the last mentioned case, the return of the deposit was ordered, but no damages awarded; in *Wauton* v. *Coppard* [1899] 1 Ch. 92, when an agreement for sale was rescinded on the ground of misrepresentation (innocent), a similar order was made except that interest at 4 per cent. was ordered. For an example of an agreement for a lease being rescinded, there is *Whittington* v. *Seale-Hayne* (1900), 82 L.T. 49, another case of innocent misrepresentation of sanitary condition, the premises being taken for the purpose of breeding live stock. The unsatisfactory feature of the case is that the lease had been executed, but no one seems to have thought that that was an answer to the claim for rescission; it was, however, held that where that remedy is applied, damages are not to be awarded, but that "*restitutio in integrum*" is to be the guiding principle. Thus no compensation could be given for loss of stock, loss of a breeding season, or removal expenses; but the amounts paid in rent and in rates, and expended on repairs, were ordered to be paid to the tenant.

On the other hand, there is authority for the proposition that when rescission for misrepresentation can be ordered, no damage need be proved: "the motives and fancies of mankind," said Romilly, M.R., in *Ayles* v. *Cox* (1852), 16 Beav. 23, "are infinite" and so upheld the refusal of a purchaser of land, which had been sold as copyhold, to complete when it transpired that the tenure was freehold.

The Essentials of Eviction.

Dealing with the subject of the essentials of eviction on the 15th May (p. 392 of this volume), the "Notebook" stressed the fact that the term now covered any intentional act of a landlord by which a tenant's enjoyment of the premises became impossible, and submitted that it could be constituted "in an inexhaustible variety of ways." Now the county court case of *Atwood* v. *Howarth*, reported in London evening newspapers (and cited on their placards) on the 24th June, and in *The Times* the following day, undoubtedly owes its publicity to its general human interest rather than to its particular legal significance; its news value lay in the fact that a landlord who had kissed his tenant *in invitam* was ordered to pay £21 damages when she counter-claimed for assault and battery in his action for £3 14s. 10d. rent. Nevertheless, the legal point made in the article above referred to received unexpected illustration in the result of the claim, as opposed to that of the counter-claim; for it appears that the tenant left the flat for good a few hours after the incident, that her counsel submitted that the plaintiff had broken a fundamental obligation of the tenancy, and that in the course of the hearing he (plaintiff) agreed to accept a smaller amount (12s.) which had been paid into court. While the "variety of ways" may thus now be said to include osculatory eviction, regard should still be had to the definition given; by which I mean that not every landlord-inflicted kiss need be held to render enjoyment of the premises impossible. In the recent case, apart from the fact that the tenant, as a school-teacher, was properly concerned as to her reputation, it appeared that on the occasion complained of the landlord (who possessed a master key) had endeavoured to make himself at home, e.g., by switching off the tenant's wireless. There was, thus, a degree of each of the three kinds of trespass; and eviction is but a special form of trespass by one who happens to be the aggrieved party's landlord.

Our County Court Letter.

THE REMUNERATION OF SOLICITORS.

In the recent case of *In re Annetts*, at Kidderminster County Court, an application was made for an order for payment of the costs of the personal representatives on the solicitor and client scale. The applicants, having proved the will, had found that the estate was insolvent. An order for administration in bankruptcy was therefore obtained on the 16th October, 1936, and the effect was to halve the landlord's claim, the provable amount being £115. The result was to benefit the general body of creditors, and the realisation had produced about £500, which would mean a dividend of four or five shillings in the pound. The application affected about three-quarters of the bill, viz., an amount of about £20. The Official Receiver opposed the application, which was made under Bankruptcy Rule No. 115. This was an enabling rule, which only referred to the costs of procedure in court, and not to an application such as the above, which was misconceived. The applicants had done no more than their duty, which was to protect the whole body of creditors, and none of the items in question had been incurred at the request of the Official Receiver. His Honour Judge Roope Reeve, K.C., observed that, under the above order, the responsibility of the applicants had ceased and the Official Receiver took charge. The registrar, in his capacity of taxing master, had had doubts as to the jurisdiction to increase the allowance. Bankruptcy Rule No. 96 conferred wider discretion in taxation, but did not apply to the above circumstances. The court had no power to vary the order of the 16th October, 1936, and the application was therefore dismissed.

THE LIABILITIES OF CATTLE CARRIERS.

In the recent case of *W. H. Wynn & Son* v. *Bird*, at Shrewsbury County Court, the claim was for £30 as damages for negligence. The plaintiffs were farmers, and they had sent a cow, with a newly born calf, in the defendant's lorry to Wellington Smithfield. In course of transit, the cow fell in the lorry and broke its neck. Its live weight was about 10 cwts., but the carcase only realised £3 16s. 9d. in Birmingham as a casualty beast, viz., about 1½d. a pound. The meat and food inspector to Wellington Urban District Council stated that the cow was healthy, and was fit for human consumption. There was no sign of milk fever, and the neck had apparently been broken. Corroborative evidence was given by a slaughterer. The defendant denied negligence, and his case was that he had an up-to-date lorry, and the cow was tied up in the usual manner, with about 2½ feet of rope. On the journey he heard a thud, and he found that the cow had fallen with its head under the front legs. Apparently it had had a seizure, or was suffering from milk fever, as it had only calved on the Saturday before being moved on the Monday. His Honour Judge Samuel, K.C., held that there was no evidence of a seizure or of milk fever. The conclusion was that the cow died through the defective way in which it was tied. Judgment was given for the plaintiff for £26 3s. 3d. and costs, on the understanding that he would also receive the amount realised on the sale of the carcase.

ENCROACHMENT OF TREE TRUNK.

In a recent case at Aberayron County Court (*James* v. *Howard*) the claim was for £5 as damages for cutting down a damson tree. This had stood on the boundary of the properties of the parties, and the defendant's right to cut overhanging branches was admitted, but he had exceeded his right and had felled the whole tree, leaving only the stumps. The defence was that the part cut away was an off-shoot of another tree, a few yards away, and the branches had shaded the sun from the defendant's currant trees and potatoes. After a view, His Honour Judge Frank Davies held that the root of the tree had grown into the defendant's garden and had bulged the fence. The position of the remaining butt showed that one branch was wholly in the defendant's garden, but there was some doubt regarding the other. Judgment was given for the defendant, with costs. The leading case hereon is *Lemmon* v. *Webb* [1894] 3 Ch., at p. 11, and [1895] A.C. 1.

Reviews.

The Law of Libel and Slander. Second Edition. 1936. By W. Valentine Ball, O.B.E., M.A., a Master of the Supreme Court, and Patrick Browne, M.A., of the Inner Temple, Barrister-at-Law. Demy 8vo. pp. xxxv and (with Index) 229. London: Stevens & Sons, Ltd. 10s. net.

Journalists and lawyers alike would benefit from this extremely well-written book. As he reads through its illuminating pages two facts strike the observer. One is that intention is still immaterial in some cases of libel—as in trespass. The other is that the Press is unduly exposed to liability in the proper discharge of its duty and function. The law of libel is merely one instance of the need of adjusting our legal code to the changes of the time.

Soviet Justice and the Trial of Radek and Others. By Dudley Collard, Barrister-at-Law. Introduction by D. N. Pritt, K.C., M.P. 1937. Crown 8vo. pp. 208. London: Victor Gollancz, Ltd. 3s. 6d. net.

The current treason trials in Moscow have aroused lively curiosity among both the friends and the enemies of the Soviet system, and this little book written by a lawyer in practice who has found time to visit the Soviet Union three times, picking up "a fair knowledge of Russian," has considerable value in presenting the conclusions of an actual observer, though not one so sternly objective as to prevent his real sympathy with the Stalin régime to remain undetectable. The problem of self-accusation constantly recurs in legal history, as in the so-called Gunpowder Plot, the case of the Perrys and the witchcraft trials, but the author adduces excellent reasons for believing that the confessions in the present instance were narrationes of fact. A verbatim account of the examination of Radek which occupies half the book strengthens the conclusion that the charges of assassination, incendiarism and sabotage were justified. The place of this hypothesis in the appraisement of the Soviet experiment the author, very properly, does not travel outside the purely professional scope of his subject to examine. Lawyers will find the brief general account of Soviet criminal procedure of some interest.

Books Received.

The English Legal System. By G. R. Y. Radcliffe, D.C.L., of Lincoln's Inn, Barrister-at-Law, and Geoffrey Cross, M.A., of the Middle Temple, Barrister-at-Law. 1937. Demy 8vo, pp. viii and (with Index) 428. London: Butterworth & Co. (Publishers), Ltd. 16s. net.

International Survey of Legal Decisions on Labour Law, 1935–36 (*Eleventh Year*). 1937. Royal 8vo, pp. li and (with Index) 443. Geneva: International Labour Office. Price 10s.

The Story of the General Register Office and its Origins from 1538 *to* 1937. London: H. M. Stationery Office. 6d. net.

Building Societies Year Book, 1937. Compiled and edited by George E. Franey, O.B.E. Demy 8vo, pp. 505. London: Franey & Co., Ltd. 7s. 6d. net.

[All books acknowledged or reviewed can be obtained through The Solicitors' Law Stationery Society, Limited, London, Liverpool and Birmingham.]

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29-31, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Loan and Policy.

Q. 3463. A deceased borrowed money on the security of a policy twenty years ago. Later on it was found the security was worthless owing to some condition in the policy charged. The deed of charge, however, remains as evidence of the debt which has never been discharged. Ten years ago the deceased became bankrupt and died an undischarged bankrupt. On his death he left a will appointing two executors, one of whom was the person who lent the money described at the beginning of this letter twenty years ago. The will was not proved, as it was thought the deceased died insolvent, but three years afterwards an asset is discovered by one of the family amounting to about £100. The creditor-executor proposes to apply for probate of the deceased's will and the following questions arise :—

(1) Has the executor a right of retainer (that is to say, can he prefer his own debt to the debts of the other creditors of the deceased) of which the trustee in bankruptcy cannot deprive him ?

(2) Must the trustee in bankruptcy be informed of the position, if he has no right to deprive the executor of his right of retainer, and at what stage should the trustee be informed ?

"Halsbury's Laws," 1910 edition, vol. 14, para. 590, puts the executor's position very strongly, and para. 568 is the nearest we can get to the case outlined in this letter. We shall be glad to have your views and to know if you will refer us to an authority dealing with an executor's right of retainer in the case of a deceased who dies an undischarged bankrupt and leaves property together with an executor to whom he is indebted.

A. Had the debt to creditor-executor been incurred after the bankruptcy, the answer given would probably have been different, but in view of the fact that the debt preceded the bankruptcy, we regret that our answer must be that the debt was discharged by the bankruptcy and so the ordinary power of an executor to revive a statute-barred debt—if it would have been statute-barred—does not apply. The creditor's right was to prove in the bankruptcy valuing the security, if it had any value. As to the personal liability, that ceased with the adjudication, and there was at the decease of the debtor no debt in respect of which the right of retainer could be exercised.

Repair of Manhole.

Q. 3464. In 1932, A sold the Blackdale estate to B, and the mansion house was conveyed by A and B to a sub-purchaser, C. B subsequently sold off part of a field, which we will call North Blackacre, to D, and the residue of the same field, which we will call South Blackacre, to E. The drain from the mansion house runs through North Blackacre to the sewer. No mention was made of it in the conveyance either to C or D as it was considered to be an easement of which both purchasers were aware. The lid of an inspection chamber to this drain situate in North Blackacre has been broken, and the local sanitary authority has given notice to C to repair it. C holds that as it is on D's land, D is responsible for any damage arising. D's position (if this is correct) is complicated by the fact that he has never fenced off his piece of land, and that the damage to the manhole has been caused either by tenants or licensees of E. We act for C, D and E, and are anxious that no claim should be made which cannot be justified. We shall therefore be glad to know whether you think—

(1) That the sanitary authority was entitled to order C to repair the manhole.

(2) Whether C has any remedy against D.

(3) Whether D has any remedy against E ; and

(4) Whether E has any remedy against (*a*) a grazing tenant, (*b*) a licensee.

A. (1) It is doubtful whether the sanitary authority was entitled to order C to repair the manhole. The latter was apparently only in a drain, on private property, and not in a sewer, vested in the local authority. If the manhole was in a sewer, it was repairable by the local authority. The grounds of the requirement to repair the manhole are not stated. If the notice was to abate a nuisance, by repairing the manhole, it should have been served on D, as occupier of the land on which the nuisance existed.

(2) As C is not liable, he has no remedy against D, if he (C) does the repairs voluntarily.

(3) D, if served in due course with a fresh notice, upon which he incurs the expense of repairing the manhole, will have no remedy against E. There is no evidence of damage by tenants or licensees of E. Trespassers may be responsible.

(4) E has no remedy against (*a*) a grazing tenant, or (*b*) a licensee, for the same reason that D has no remedy against E.

Austrian Arbitration.

Q. 3465. In 1932, my clients (commercial agents in England) entered into an agency agreement with a firm of Austrian manufacturers. This agreement contained an arbitration clause about the validity of which there is no dispute. It provides for arbitration in Austria. My clients allege certain breaches of this contract and propose to claim under same. In 1935, a new agreement was made verbally in England and confirmed by letters exchanged between England and Austria. This agreement, too, provides for arbitration in Austria, but the validity of its arbitration clause is disputed by my clients who also maintain that the 1935 agreement is governed by English law, and now the Austrian firm is about to claim certain balances due from the agents under the 1935 agreement and is going to apply to the Austrian Arbitration Court. Supposing now that English law applies to the 1935 agreement, the questions are :—

(1) Can the defendants, having formally objected to the jurisdiction of an Arbitration Court in Austria, defend the case on its merits in Austrian arbitration without being deemed to have acquiesced in such jurisdiction ?

(2) If the plaintiffs be successful in the Austrian Arbitration Court and seek to enforce the award in England by making an application under the Arbitration Clauses (Protocol) Act, 1924 (14 & 15 Geo. V, c. 39), and the Arbitration (Foreign Awards) Act, 1930 (20 Geo. V, c. 15), would it be a good defence against such an application to prove that by Austrian law the 1935 agreement is governed by the law of England and to claim that s. 6 (*b*) of the 1930 Act takes the matter out of the scope of enforcement in England ?

(3) If the Austrian firm choose not to rely on the 1935 arbitration clause and elects to go to the English ordinary courts in respect of its claims under the 1935 agreement, would my clients as defendants, be allowed to counter-claim

in such proceedings in respect of facts which arise from the 1932 agreement, or would the English judge hold that the only proper form for such counter-claims was the Austrian arbitration provided for in the 1932 agreement?

A. (1) The formal objection to jurisdiction will be waived by defending the case on its merits. It is difficult to see how the arbitration clause in the 1935 agreement can be objected to, if the agreement is recognised as valid in other respects. The questioner's clients cannot approbate and reprobate, i.e. they cannot accept such parts of the agreement as suit themselves and repudiate the rest.

(2) It would be a good defence to prove that the 1935 agreement is governed by the law of England. Again, however, it is difficult to see how this could possibly be proved, if there is evidence that the Austrian Court of Arbitration has not only accepted jurisdiction, but has adjudicated on the case.

(3) The choice of the English courts would constitute a submission to jurisdiction, and a waiver of the right to proceed to arbitration in Austria under the 1932 agreement. The latter was, apparently, superseded by the 1935 agreement, but, even if the 1932 agreement is still in force, the proviso as to arbitration in Austria is not a bar to the English court's jurisdiction, as the submission to the jurisdiction implies that the Austrian parties desire all outstanding matters to be settled by the decision of the English courts.

It is to be noted that it is doubtful whether the above questions arise, as the query states: "Supposing now that the English law applies to the 1935 agreement." This appears to be doubtful, as the mere fact of the agreement being made verbally in England does not override the fact that arbitration was agreed to take place in Austria.

Will—Words of Futurity in—Meaning of.

Q. 3466. A testator by a home-made will devised his house and contents to his daughter Jane. This devise is followed by two specific bequests, and the testator afterwards proceeds: "Should my said daughter Jane marry she will have to pay my sons A, B, C, D and E £14 each." We shall be glad to know whether, in your opinion, on the true construction of the will, the direction as to the payment of the sum of £14 to each of the persons named is binding upon the daughter in the event of her marriage, or whether the direction is intended to operate only in the event of the daughter marrying in the lifetime of the testator.

A. The primary meaning of words of futurity in a will is to denote futurity as from the date of the will and not as from the date of the death of the testator. We see nothing in the context to displace this primary meaning. The direction is thus, in our opinion, binding upon the daughter if she has married or marries after the date of the will, and whether in the life or after the death of the testator. We do not think that the direction is void as being in restraint of marriage. It would appear that there was an intention to make superior provision for the daughter than for the sons in view of her unmarried state.

Intestate Estate—Ascertainment of Persons entitled.

Q. 3467. A.B., a spinster, recently died intestate leaving personal estate of a little over £300 in value. We are instructed by X.Y., who is cousin german once removed of the deceased and who believes that she and her brother are the only persons entitled to share in the estate, to apply for grant of administration. She will, of course, have to make the usual oath and furnish the usual bond. Assuming that our client obtains the desired grant, should she advertise for other possible next-of-kin and, if so, to what extent, before she divides the estate between herself and her brother? What would be the position of the administratrix and her bondsmen if a *bona fide* claimant to a share of the estate appeared after the distribution? It is intended to publish the usual notice to creditors under s. 27 of the T.A., 1925.

A. If the administratrix honestly believes that she and her brother are the only persons entitled, and the brother is a responsible person *sui juris*, she can divide the estate taking an undertaking from the brother to contribute equally if any claim is raised. She should, however, get the consent of her bondsmen. The only certain way of getting a discharge is by an application to the court, which may be the county court, see County Court Act, 1934, s. 52, and County Court Ord. VII, r. 5, asking for an inquiry as to what notices should be issued to ascertain who were the persons entitled. See *Re Letherbrow Hopp* v. *Dean* (1935), W.N. 34, and article in 79 Sol. J. 175. The notice for creditors could, of course, be combined with notice for claimants. Alternatively, the court can be asked to ascertain who are the (creditors and) persons entitled to the residuary estate. Short of this the administratrix can issue the advertisements she thinks sufficient, and if a claimant comes forward after the estate has been distributed, it will be for her to satisfy the court that the advertisements were such as the court would have authorised, otherwise she and the bondsmen may be liable, unless the claim becomes statute-barred. The period of limitation when the next Law Reform Act is passed is likely to be twelve years.

Guarantee of Overdraft.

Q. 3468. A guarantees B's overdraft at C Bank. The amount due to the bank is paid and the guarantee cancelled, but the bank declines to hand over the instrument of guarantee as being contrary to banking practice. Has not the guarantor the right to insist on the handing over of the guarantee?

A. The guarantor can insist on the handing over of the guarantee, under the Mercantile Law Amendment Act, 1856, s. 5.

Pre-1936 Widow Administratrix—No Heir Discovered.

Q. 3469. A testatrix who has recently died at an advanced age made a specific devise to a friend of the freehold house of very small value which she was occupying at her death. This house was a part of the estate of her late husband who died in 1906 intestate leaving the testatrix as his widow but no children. The testatrix took out letters of administration to his estate which was of a total gross value of approximately £800. It would therefore appear that she was entitled to the first £500 under the Intestates Estates Act, 1890, proportionately out of the personalty and realty and to dower out of the balance of the realty. As she obtained letters of administration by personal application it is unlikely that any adjustment or arrangement was made, particulars cannot be obtained and it is not known who is her late husband's heir. She continued to reside in the house from the date of his death until her own. In view of the very small amount involved her executor wishes to make an assent to the devisee if he can be protected. Do you consider that he could properly make an assent and would an indemnity by the devisee protect him. Can you refer us to a precedent of the latter.

A. It can, we think, be taken for granted that the testatrix had acquired a title under the Statutes of Limitation. If the executor merely makes an assent for all the estate and interest of the deceased therein he incurs no liability and does not require an indemnity. If the devisee desires, as he may naturally do, an assent for the vesting of an estate in fee simple, which should eventually become a root of title there will still only be an implied covenant that the executor has done no act to encumber. He might, however, in fairness ask the devisee to give him an undertaking (based on the consideration that the executor at the request of the devisee is assenting to the vesting in the latter in fee simple of property of which the title depended on the Statutes of Limitation) to indemnify the executor against any claim that should at any time be made by any person and against any costs or proceedings consequent on such claim. We do not know of a precedent.

To-day and Yesterday.

LEGAL CALENDAR.

28 JUNE.—On the 28th June, 1705, Sir Gilbert Elliot became a judge of the Court of Session with the title of Lord Minto.

29 JUNE.—Sir Robert Thorpe, a man described by Coke as "of singular judgment in the laws of this realm," was one of the group of mediæval Chancellors who were both laymen and lawyers. Practising successfully, he attained the rank of King's Serjeant in 1345, and was promoted to the bench as Chief Justice of the Common Pleas in 1356. When, in answer to the petition of the Commons, it was determined that none but lawmen should fill the office of Chancellor, it was on him the choice fell, but he enjoyed his promotion little more than a year. Falling mortally ill at the Bishop of Salisbury's palace in Fleet Street, he died on the 29th June, 1372.

30 JUNE.—For many years Chief Justice Willes had kept a hopeful eye on the Great Seal, waiting for the long-expected resignation of Lord Hardwicke. The time at last came and he was duly offered the Chancellorship. Opening his mouth a little wider, he stipulated for a peerage too. This was refused, and hoping to gain his point he held out. Immediately after his tactical rejection of the offer, the Attorney-General, Sir Robert Henley, called on him, and, walking in the garden, the Chief Justice indignantly asked him whether any man of spirit could have accepted the Great Seal in such circumstances. "Would you, Mr. Attorney, have done so?" he asked, only to learn to his consternation that Mr. Attorney had. Henley became Lord Keeper without a peerage on the 30th June, 1757.

1 JULY.—On the 1st July, 1663, Pepys records: "After dinner we fell a-talking, Mr. Batten telling us of a late trial of Sir Charles Sedley, the other day before my Lord Chief Justice Foster and the whole bench for his debauchery a little while since at Oxford Kate's. It seems my Lord and all the rest of the judges did all of them round give him a most high reproof, my Lord Chief Justice saying that it was for him and such wicked wretches as he was that God's anger and judgments hung over us, calling him sirrah many times. It seems they have bound him to his good behaviour, there being no law against him for it, in £5,000."

2 JULY.—Though John de Salmon, Bishop of Norwich, was Lord Chancellor for three and a half years from 1320, he suffered so seriously from ill-health that in his time the business of the Chancery was frequently carried on by deputies. During his period of office the clouds were blowing up for the fatal quarrel of Edward II and his queen. He escaped the final act of the tragedy, dying at Folkestone Priory on the 2nd July, 1325.

3 JULY.—On the 3rd July, 1780, Mr. Mascal, an apothecary of some standing, was tried at the Old Bailey on a charge of having taken part in the burning of Lord Mansfield's house in Bloomsbury Square by the mob during the Gordon riots. It was a case of oath against oath, for the Crown witnesses positively swore that they had seen and heard him encouraging the rioters to destroy the furniture and the books, while the defence witnesses were equally positive that he had deplored the vandalism aloud. Finally, the jury acquitted him without leaving the court, the verdict being greeted by a storm of clapping.

4 JULY.—On the 4th July, 1831, the Rev. Robert Taylor, called by Henry Hunt "the Devil's chaplain," was tried for blasphemy at the Surrey Sessions. At first a clergyman of the Church of England, he had wandered into strange religious by-paths, holding eccentric services, delivering extraordinary discourses and writing (in so far as he had a consistent purpose) to expound Christianity as a scheme of solar myths. The exploit that now got him into trouble was a queer Easter service which he had conducted dressed as a bishop. Some of his more objectionable utterances on this occasion now earned him two years' imprisonment.

THE WEEK'S PERSONALITY.

Sir Gilbert Elliot, Lord Minto, rather surprisingly ended a decidedly revolutionary career in a glow of propriety as a judge of the Court of Session. He began his legal life as a writer to the signet in Edinburgh, and while quite a young man distinguished himself in the eyes of the Whigs by securing a stay of the proceedings for nonconformity against William Veitch, a covenanting minister. Going a step further, he largely contributed to the success of the Earl of Argyll's escape from prison and afterwards joined him in Holland, co-operating in his plots against James II and collecting money for a rising in Scotland. The outbreak of the revolt found him in arms, and its failure forced him to fly the country, but in his absence he was convicted and suffered forfeiture, being condemned to death by the Court of Justiciary. Two years later, he secured a pardon and decided to apply for admission to the Faculty of Advocates, but failed to pass his examinations at the first attempt. He was, however, successful in 1688, the year of the Whig revolution, and thenceforth under the congenial rule of William of Orange he went from strength to strength. His forfeiture was rescinded. He was knighted. He was appointed Clerk to the Privy Council. He went into Parliament. He enjoyed a lucrative practice. Finally, he crowned his achievements by ascending the bench.

WILLS OF LAWYERS.

Nothing amuses the layman so much as the defeat of a lawyer in the field of law. Almost proverbially, the man of law is the victim of his own will, and the latest addition to the distinguished company of great judges and brilliant barristers whose skill forsook them at the testamentary test is the late Mr. Clement Gatley, most learned in the law of libel, the Court of Chancery having lately declared the residuary gift in his will "void for uncertainty." He is in very good company. Lord St. Helier, who, as Sir Francis Jeune, had earned distinction as President of the Probate Division, left a document transgressing most of the rules he had judicially enforced. Lord Chancellor Lyndhurst left a bad will, Sir Richard Muir, dreaded at the Old Bailey, likewise came to grief with a home-drawn disposition. The strange story of the will of Lord St. Leonards made a leading case, and Serjeant Maynard, in the days of William III, is said to have left his will purposely worded in obscure terms so as to invite litigation and settle certain interesting points that had puzzled him in his lifetime.

KINDNESS TO SHRIMPS.

Not long ago the honoured name of Prideaux, famous in the law for 300 years, and, in this case, belonging to a barrister of the Middle Temple, appeared at the foot of an amazing document—if one can speak of the foot of a document which consisted of odd sheets of notepaper of various sizes with so many unattested interlineations that an agreed "fair copy" had to be prepared for probate. Although twenty-six years had elapsed between the making of the will and the testator's death, he had never made a fresh copy. The most remarkable clause read as follows: "I give the following gifts on the condition of no person interested eating foie gras or any crab, eel, cray fish, lobster, prawn, shrimp or any shelled or other animal or creature without absolute proof of humane death or killing of such creature before cooking and with the least possible pain." Fortunately for the catering trade, Mr. Justice Luxmoore decided that such a condition was invalid.

Notes of Cases.

House of Lords.

Evans *v.* Bartlam.

Lord Atkin, Lord Thankerton, Lord Russell of Killowen, Lord Wright and Lord Roche. 30th April, 1937.

PRACTICE—JUDGMENT OBTAINED BY DEFAULT—JUDGE'S DISCRETION TO SET ASIDE—JURISDICTION OF COURT OF APPEAL TO INTERFERE WITH THAT DISCRETION—R.S.C., Ord. 13, r. 10; Ord. 27, r. 15.

Appeal from a decision of the Court of Appeal ([1936] 1 K.B. 202).

The defendant, Evans, became indebted to the plaintiff as a result of betting transactions with him, and the plaintiff's agent threatened to declare the defendant a defaulter if he did not pay, but stated that he agreed that that should not be done if he were satisfied that the defendant would pay within a reasonable time. The defendant failed to pay, and the plaintiff brought an action against him for the amount due. The defendant not having entered an appearance within the stipulated time, judgment was signed against him by default. The same day the plaintiff's solicitor wrote to the defendant for payment. The defendant asked for time, and was given seven days. Subsequently, he entered an appearance to the writ and took out a summons to set aside the judgment, contending *inter alia* that the contract sued on, if any, was a contract by way of gaming and wagering. The master dismissed the application, but Greaves-Lord, J., on appeal granted it and set the judgment aside. The Court of Appeal (Slesser and Scott, L.JJ., Greer, L.J., dissenting) reversed his decision, and the defendant appealed.

Lord ATKIN said that the power to set aside a judgment obtained in default of appearance was given to the court or a judge by Ord. 13, r. 10, of the Rules of the Supreme Court, a similar power, extending to judgments by default under any rule, being given by Ord. 27, r. 15. It was a power entrusted to the discretion of the court or judge, and, by Ord. 54, r. 12, the master was given jurisdiction to exercise the discretion. It was contended for the plaintiff-respondent that, the master having exercised his discretion, the judge in chambers should not reverse his decision unless it were made evident that he had exercised his discretion on wrong principles. He (Lord Atkin) was convinced that, where a discretionary jurisdiction was given to the court or a judge, the judge in chambers was in no way fettered by the previous exercise of the master's discretion. His (the judge's) discretion was intended by the rules to determine the parties' rights, and he was entitled to exercise it as though the matter were arising before him for the first time. He would give the weight it deserved to the master's decision, but he was in no way bound by it. That, in his (his lordship's) experience, had always been the practice in chambers, and he was glad to find it confirmed by the Court of Appeal in *Cooper* v. *Cooper* (1936), 80 SOL. J. 510; 52 T.L.R. 590; [1936] W.N. 205. In the Court of Appeal, Slesser and Scott, L.JJ., had considered the judge precluded from exercising his jurisdiction to set aside the judgment by the fact that the defendant had applied for the matter to be allowed to stand over in order that he might see if he could arrange to pay, the plaintiff then consenting to let it stand over for seven days. Slesser, L.J., had put his judgment on the ground that the defendant was seeking both to approbate and to reprobate. Having taken a benefit under the judgment, namely, seven days' time, he could not then seek to set it aside. Scott, L.J., had preferred to put his judgment on election. Neither doctrine was, however, applicable to the facts, because there was no evidence that the defendant, when he asked for or received time, had any knowledge of his right to apply to set the judgment aside. To infer election, it must be shown that the person concerned had full knowledge of the various rights among which he elected. He (Lord Atkin) could not think that a judgment debtor who asked for and received a stay of execution approbated the judgment so as to be precluded thereafter from seeking to set it aside, whether by appeal or otherwise. He agreed with the reasoning of Greer, L.J., except for the latter's holding [1936] 1 K.B., at p. 209, that the Court of Appeal had no power to interfere with the judge's exercise of his discretion unless they thought he had acted on some wrong principle of law. Normally the Court of Appeal would not interfere except on that ground, but, if it were seen that on other grounds the decision would result in the doing of injustice, the court had both the power and the duty to remedy it. Here there was no reason for interfering with the discretion exercised by Greaves-Lord, J., and the appeal would be allowed.

The other noble lords concurred.

COUNSEL: *G. Beyfus*, K.C., and *C. L. Henderson*, for the appellant; *R. P. Croom-Johnson*, K.C., and *H. Shanly*, for the respondent.

SOLICITORS: *Maude & Tunnicliffe*, agents for *Stirk & Co.*, Wolverhampton; *Leslie Marrison*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Fender *v.* St. John Mildmay.

Lord Atkin, Lord Thankerton, Lord Russell of Killowen, Lord Wright and Lord Roche. 28th June, 1937.

BREACH OF PROMISE—PROMISE MADE BY MARRIED MAN BEFORE DECREE *Nisi* OBTAINED AGAINST HIM MADE ABSOLUTE—VALIDITY.

Appeal from a decision of the Court of Appeal ([1936] 1 K.B. 111; 79 SOL. J. 879) (Slesser and Greene, L.JJ.; Greer, L.J., dissenting) affirming a judgment of Hawke, J. ([1935] 2 K.B. 334; 79 SOL. J. 419).

A Miss Fender having brought an action against the defendant for breach of promise of marriage, the action was tried by Hawke, J., and a special jury. The facts were not in dispute that the defendant's wife, having obtained a decree *nisi* against him, he, during the six months before the decree was made absolute, made promises to marry the plaintiff when the decree had been made absolute, and that the promises were broken. On the issue as to damages, the jury awarded Miss Fender £2,000. Hawke, J., held that he was bound by *Wilson* v. *Carnley* [1908] 1 K.B. 729, and *Spiers* v. *Hunt* [1908] 1 K.B. 720, and decided in favour of the defendant that the promises were not enforceable.

LORD ATKIN, giving judgment, said that the doctrine of public policy should only be invoked in clear cases in which the harm to the public was substantially incontestable, and did not depend upon the idiosyncratic inferences of a few judicial minds. The doctrine did not extend only to harmful acts; it had to be applied to harmful tendencies. Here the ground was still less safe. One could not resist the tendency test. It was applied in that House in that remarkable case, *Egerton* v. *Lord Brownlow* (1853), 4 H.L. Cas. 1, not indeed to a contract, but to a condition. The contract unreasonably to restrict a man's economic activities, to procure a marriage between two persons, to oust the jurisdiction of the court, those things were decided to be harmful in themselves. To do them was injurious to public interests. What was meant by tendency? It could only mean that, taking that class of contract as a whole, the contracting parties would in a majority or, at any rate, in a considerable number of cases be exposed to a real temptation, by reason of the promises, to do something harmful, that is, contrary to public policy, and that it was likely that they would yield to it. Referring to *Spiers* v. *Hunt*, *supra*, and *Wilson* v. *Carnley*, *supra*, Lord Atkin said that it could hardly be doubted that a betrothal to another would almost necessarily interfere with, hamper and embarrass the married consortium, which on the hypothesis was existing

and would continue to exist. If the moral ideal and the legal obligation were expressed in the promise to love and to cherish, it might well be doubted whether they could exist unimpaired in the presence of a betrothal to another. But what application had that reasoning to circumstances as they existed after decree *nisi*? Not only were the parties not living together, but they were not entitled to require that conjugal rights should be restored. The consortium was broken. The status of marriage, of course, existed until decree absolute, but the normal obligations and conditions of marriage in ordinary circumstances after decree *nisi* had disappeared. There was no consortium, and the parties were living apart. They owed no duties each to the other to perform any kind of matrimonial obligation. The custody of the children was provided for by the court. The maintenance of the wife, if petitioner, was similarly provided for. There was no single duty being observed by either to the other, and it appeared merely fanciful to suggest that the public interests were in any respect being impaired. It ought to be remembered in this discussion that by legislation it had been established that it was not contrary to public policy that married persons should obtain a divorce, and not contrary to public policy that, immediately after final divorce, either of them should marry. To him (Lord Atkin) it appeared lamentable that the law should set its ban upon promises made to do a lawful act by persons who, in the interval between the promise and its fulfilment, did nothing, and were not induced by the promise to do anything, contrary to the public interests. He dismissed with some indignation the idea that public policy was to be involved on the ground that such promises tended to immorality. As to the contention that they tended to avoid reconciliation, proceedings taken to obtain a decree constituted the most serious and deliberate decision which a man or woman now took. The fact, at any rate, was that in an enormous proportion of cases, when once a petitioner had got as far as decree *nisi*, no reconciliation did, or in most cases could, take place. After decree *nisi* the bottom had dropped out of marriage. In Greer, L.J.'s, words, nothing but a shell was left. The whole notion of any danger to public interest seemed to him (his lordship) fanciful and unreal. He thought that public policy demanded that these contracts should be enforced and that the appeal should be allowed.

Lord Thankerton gave judgment agreeing with Lord Atkin.

Lord Russell of Killowen, in a dissenting judgment, said that it was conceded that the general rule of English law was that a married person could not during the life of his or her spouse validly contract to marry another person; but it was said that that rule did not apply if the contract were made after decree *nisi* pronounced in a suit between the spouses. For that alleged exception to the general rule no authority existed. It arose for decision for the first time in the present case. As it seemed to him, every argument for the appellant which depended on the existence of a decree *nisi* was applicable to a case where the suit had not yet proceeded beyond the presentation of the petition. The decree *nisi* affected nothing. It did not dissolve the marriage. The parties were just as much man and wife as before. It was true that the right to consortium could not be enforced; that duty and obligation between spouses were no doubt in suspense. So it was when once a petition for divorce had been presented. Other duties and obligations, however, remained. The duty and obligation to refrain from sexual intercourse with others, surely, continued. To break it would be to commit adultery, just as much as to marry another would be to commit bigamy. He did not understand how the existence of a decree *nisi* was really relevant or essential to this case. The parties at the time of the contract were either married or not. If they were married could either of them, while still married, enter into an enforceable contract to marry someone else? In his opinion, any contract the effect or tendency of which would be to create an obstacle or bar to the reconciliation of husband and wife, must necessarily be a contract against public policy, and the appeal should be dismissed.

Lord Wright gave judgment agreeing with Lord Atkin and Lord Thankerton. Lord Roche gave judgment agreeing with Lord Russell of Killowen.

Counsel: *J. P. Eddy*, K.C., *D. W. Conroy*, and *I. M. Noordin*, for the appellant; *R. P. Croom-Johnson*, K.C., and *P. B. Morle*, for the respondent.

Solicitors: *Percy Haseldine & Co.; Sutton, Ommanney & Oliver.*

[Reported by R. C. Calburn, Esq., Barrister-at-Law.]

Court of Appeal.

In re Coller's Deed Trusts; Coller *v.* Coller.

Greene, M.R., Romer and Scott, L.JJ. 4th and 14th June, 1937.

Deeds—Deed of Family Arrangement—Construction—Annuities payable out of Income of Certain Assets—Provision for Application of Balance—Whether Annuities continuing Charge on Income.

Appeal from a decision of Farwell, J.

Under a deed of family arrangement executed in September, 1932, it was directed that certain assets representing the residuary estate of one, Coller, deceased, should be held by the trustees of his will in trust (1) to pay out of the income £10 a week to his widow during widowhood; (2) to pay out of the income £3 a week to his widowed daughter during widowhood; (3) to pay out of the income £1 a week to his mother during her life; (4) during the widowhood of his widow to pay or apply the whole or any part of the balance of the income for the maintenance or benefit of all or any one or more exclusively of the other or others of his widow and his four sons as the trustees in their absolute discretion should think fit, and, subject as aforesaid, to apply the said balance of the said income in payment off of the existing mortgages on the estate of the deceased, or some part thereof; (5) upon trust as to capital and income for the testator's four sons in equal shares. From August, 1933, the weekly sums prescribed fell into arrear. Farwell, J., held that they were not charged on corpus and were not a continuing charge on the income.

Romer, L.J., dismissing the widow's appeal, said that the learned judge was right in following the reasoning in *Stelfox* v. *Sugden*, John, 234. The direction as to surplus income showed that it was intended that the weekly sums in any year should be paid out of the income of that year and out of that alone. For instance, if during the first few years there had been a surplus which the trustees in the exercise of their discretion had applied wholly for the widow's benefit, and during the remainder of her widowhood the income had been insufficient to pay her the weekly sums, the parties could hardly have contemplated that she or her personal representatives should be paid the arrears of her weekly sum out of income accruing after her re-marriage or death. The view taken in *In re Platt* [1916] 2 Ch. 563, did not differ substantially from the court's view in this case.

Counsel: *Cleveland-Stevens*, K.C., and *Rink*; *Gover*, K.C., and *Danckwerts*; *Henty*.

Solicitors: *R. Shapiro & Co.; N. Mackover; Teff & Teff.*

[Reported by Francis H. Cowper, Esq., Barrister-at-Law.]

Ellis *v.* Fulham Borough Council.

Greer, Slesser and MacKinnon, L.JJ. 25th June, 1937.

Local Government—Public Park—Children's Paddling Pool—Piece of Glass Embedded in Sand—Injury to Child's Foot—Liability of Local Authority.

Appeal from a decision of Greaves-Lord, J. (81 Sol. J. 140).

In a park owned and occupied by the defendants and supervised by park-keepers under their instructions there was provided a pool, likewise supervised, along the side of which had been placed loads of seashore sand to give it the attractions of the seaside. It was shallow at the sides with a maximum depth of two feet in the middle and suitable for paddling. The officials knew that for many years it had been so used and there was a notice board stating that owing to the risk of cut feet bottles, tins or other sharp articles must not be taken into the pool. The duties of the keepers included raking the sand, but Greaves-Lord, J., held that the rakes provided were useless for ascertaining whether anything was embedded in it as they only went on top and did not penetrate it. Subordinate park-keepers had instructions to report to their superiors any accident occurring in the park. Some days before the accident now in question a child had been injured in the pool near the same place. The subordinate keeper to whom this was reported did not communicate it to his superior. In August, 1936, the plaintiff, a small boy, went to the pool and before leaving it entered the water to wash the sand from his feet. His foot was severely cut by a piece of glass embedded in the sand which either by silting or by being pushed in covered the bottom of the pool near the edge. Greaves-Lord, J., held that the defendants had been guilty of negligence and awarded the plaintiff damages, treating him as an invitee.

GREER, L.J., dismissing the defendants' appeal, said that the pond was so constructed as to indicate that it was for children to paddle in. It was not necessary to decide whether or not the plaintiff was an invitee. His lordship referred to *Robert Aston & Sons (Collieries) Ltd.* v. *Dumbreck* [1929] A.C. 358, at p. 364; *Hastie* v. *Edinburgh Magistrates* [1907] S.C. 1102 and *Glasgow Corporation* v. *Taylor* [1922] 1 A.C. 44, and said that assuming the plaintiff was a licensee the defendants came within the principle in *Purkis* v. *Walthamstow Borough Council*, 151 L.T. 30, and if they knew of a danger not known to the plaintiff which might arise from the use of the pool by children for paddling their obligation was to see that the danger was removed or that the children did not paddle. They only raked the sand, which had little or no effect except to remove something from the surface. It could not be supposed that the piece of glass was not removable. The defendants had not taken sufficient steps to remove the risks to which the children were exposed. They recognised the existence of the danger and took daily precautions to remove dangerous articles, but in fact they did not take adequate steps to remove this piece of glass.

SLESSER and MACKINNON, L.JJ., agreed, expressing the opinion that the plaintiff was a licensee.

COUNSEL: *Macaskie*, K.C., *Gilbert Granville Sharp* and *Sexton*; *Levy*, K.C., *I. Jacob* and *Gold*.

SOLICITORS: *W. Townend*, Town Clerk, Fulham; *Tobin & Co.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Appeals from County Courts.

In re **Wilson; Wilson** *v.* **Bland.**

Clauson and Luxmoore, JJ.
21st June, 1937.

LIMITATION OF ACTIONS—NON-PAYMENT OF DEBT—ARRANGEMENT INSTEAD OF MONEY PAYMENT OF INTEREST—CREDITOR TO LIVE ON DEBTOR'S FARM RENT FREE RECEIVING PRODUCE FREE—CARRYING OUT OF ARRANGEMENT—WHETHER ACKNOWLEDGMENT—STATUTE OF FRAUDS AMENDMENT ACT, 1828 (9 Geo. 4, c. 14), s. 1.

Appeal from Colchester County Court.

Between 1923 and 1925 the creditor advanced to the two debtors, his brothers, who were farmers, various sums amounting to over £4,000, but since those dates no principal or interest had been paid. In 1927 an oral arrangement was entered into in relation to their liability whereby, as repayment of the capital sum was not then possible, their obligation to pay him interest was to be discharged by his being allowed to live rent free at a farm of which they had a lease expiring in September, 1935, and being provided with farm produce without charge. This arrangement was carried into effect and the creditor occupied the farm during the rest of the lease. The value of so occupying it was worth about £100 a year, and the value of the produce received about £46 a year. In December, 1935, the debtors entered into a deed of arrangement for the benefit of their creditors. Their brother now sought a declaration that the sum advanced by him constituted a valid and enforceable claim against them. The learned county court judge held that the debt was statute-barred. The creditor appealed.

LUXMOORE, J., in giving judgment allowing the appeal, said that the question was whether the carrying out of the arrangement was sufficient to take the case out of the Limitation Act, 1623, and referred to *Tanner* v. *Smart*, 6 B. & C. 603, and *Morgan* v. *Rowlands*, L.R. 7, Q.B. 493. The matter depended on whether there had been "any payment of any principal or interest" within the Statute of Frauds Amendment Act, 1828, s. 1, within six years before this creditor made his claim, from which a new promise to pay could be implied (*Bodger* v. *Arch*, 10 Ex. 333). If the arrangement of 1927 was on its proper construction an agreement to satisfy the interest in kind, the continued carrying out of its terms would entitle the court to infer a new promise to pay the debt from each act done in accordance with it. The learned judge considered that if the arrangement had been in writing it would not have constituted an acknowledgment from which a promise to pay the principal could be inferred, but the arrangement clearly acknowledged the existence of the debt, since it provided for the future discharge of interest in respect of it. There was no condition as to payment at a future time and no refusal to pay, though there was a statement of present inability. The arrangement fell within *Spencer* v. *Hemmerde* [1922] 2 A.C. 507. The learned judge was wrong in holding that the arrangement, if in writing, would not have constituted an acknowledgment. Moreover, the services rendered in pursuance of it constituted a continuous acknowledgment.

COUNSEL: *Molony*; *Stable*, K.C. and *G. Pollock*.

SOLICITORS: *Wilberforce, Allen & Bryant*, for *F. S. Collinge & Co.*, of Colchester; *Corbin, Greener & Co.*, for *Thompson, Smith & Puxon*, of Colchester.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—Chancery Division.

Bynoe *v.* **General Federation of Trade Unions Approved Society.**

Simonds, J. 18th June, 1937.

MEDICINE—QUALIFIED MEDICAL PRACTITIONER—NOT REGISTERED UNDER DENTISTS ACTS, 1878 AND 1921—DENTAL SERVICES TO MEMBER OF APPROVED SOCIETY—NATIONAL HEALTH INSURANCE ACT, 1924 (15 & 16 Geo. 5, c. 38)—DENTAL BENEFIT REGULATIONS, 1930 (S.R. & O., 1930, No. 1060).

The plaintiff, a qualified and registered medical practitioner though not registered as a dentist under the Dentists Acts, 1878 and 1921, claimed to be a dentist prepared to supply dental treatment at scale fees, and in February, 1935, gave dental treatment to a member of the defendant approved society to which he sent in an account of charges amounting to £1 12s. 6d. on the prescribed form known as a "dental letter." The defendant society wrote to the patient saying that they could not pay the charges or deal with the letter as the plaintiff's name was not on the register of dentists. They suggested that he should obtain an estimate from another practitioner. The plaintiff now claimed an injunction

to restrain the defendants from publishing any words implying that he was not a person entitled to give dental services and to receive payment in respect thereof under art. 21 (1) of the Dental Benefit Regulations, 1930, or the National Health Insurance Acts, 1924 to 1928.

SIMONDS, J., in giving judgment, said that under the Dentists Act, 1921, s. 1, no person should practise dentistry unless registered in the dentists' register, but under sub-s. (3) nothing prevented the practice of dentistry by a registered medical practitioner. His lordship referred to the National Health Insurance Act, 1924, ss. 93 and 75, and to the National Health Insurance Act, 1928, s. 16 (3). The Dental Benefit Regulations made under those Acts defined by art. 2 a dentist as a person duly registered in the dentists' register. His lordship having referred to art. 21, said that the plaintiff was not within the Regulations. They were not *ultra vires*. Although there might be persons not on the dentists' register who could give dental treatment, it could be understood that the Minister of Health should confine the right to give treatment under the Acts to persons who were on the register.

COUNSEL: *A. Pocock; Grant*, K.C., and *Mulligan*.

SOLICITORS: *Hardy Bain & Co.; Vivian J. Williams & Co.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Whelan and Others *v.* **Billington Urban District Council.**

Clauson, J. 24th June, 1937.

LOCAL GOVERNMENT—FIRE BRIGADE—FIREMEN EMPLOYED BY LOCAL AUTHORITIES ON OTHER TASKS—WHETHER "PROFESSIONAL FIREMAN"—FIRE BRIGADE PENSIONS ACT, 1925 (15 & 16 Geo. 5, c. 47), s. 23.

The plaintiffs were employed as permanent members of the defendants' fire brigade. It was a condition that they were to carry out, if so required, any work which the various heads of departments could find for them. When not engaged in fighting fires or cleaning equipment they were often given tasks in the works yard of the defendants, next door to the fire station. They had also pumped water from cellars, removed fallen trees and done work in the blacksmith's and concrete making shops. Sometimes one of them had driven the ambulance. For performance of these duties they had received extra pay. In deciding the scale on which they were to receive pensions the question arose whether each was a "professional fireman" within the Fire Brigade Pensions Acts, 1925 and 1929.

CLAUSON, J., in giving judgment, said that it had been argued that "fire brigade duties" in s. 23 of the Act of 1925, meant what a local authority laid down as being the work to be performed by the fire brigade and that additional duties placed on individual firemen in accordance with the conditions of their employment must be construed to mean fire brigade duties. His lordship could not accede to that. "Fire brigade duties" meant duties performed as a member of a fire brigade. The plaintiffs were not "wholly" employed on fire brigade duties within the section but had other duties as well which were part of their employment. They were not professional firemen within the Act.

COUNSEL: *Spens*, K.C., and *Harold Williams; Radcliffe*, K.C., and *Danckwerts*.

SOLICITORS: *Carter & Barber; Lees & Co.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

H. Palmer (Executrix of R. E. Palmer, deceased) *v.* **Cattermole (Inspector of Taxes).**

Lawrence, J. 19th April, 1937.

REVENUE—INCOME TAX—TESTATOR'S INCOME—ASSESSMENT ON EXECUTOR—INCOME TAX ACT, 1918 (8 & 9 Geo. 5, c. 40), All Schedules Rules, rr. 16, 18.

Appeal by case stated from a decision of General Commissioners of Income Tax.

The appellant, as executrix of the deceased, appealed against assessments to income tax under Sched. D for the years 1925–26 to 1931–32 inclusive, made on her in respect of the deceased's and his wife's untaxed income from foreign possessions. No question of figures arose, the only question being whether the assessments were correct in principle. The deceased died in August, 1931, having made no proper returns of his income for the year in question. His widow died in June, 1934. During the whole of the years from 1925–26 to the date of the deceased's death, he and his wife were living together. By r. 18 of the General Rules applicable to all Schedules to the Income Tax Act, 1918, "where any person dies without having delivered a statement of all his . . . gains chargeable to tax . . . an assessment in respect of the . . . gains which . . . accrued to him before his death may be made at any time within the year of assessment . . . upon his executors or administrators, and the amount of the tax thereon shall be a debt due from and payable out of his estate."

LAWRENCE, J., said that the appellant's first point was that the income of the husband authorised by r. 18 to be assessed excluded that which arose or accrued to his wife and not to him in his own right. Secondly, it was contended that r. 18 only had reference to the year of assessment in which the deceased died. Thirdly, that in any event the Commissioners had no power to make an assessment in respect of the year of Captain Palmer's death on a proportionate basis on the income which they found him to have enjoyed up to the time of his death. The first contention was based on an interpretation which the Court of Appeal placed on r. 16 in *Leitch* v. *Emmott* [1929] 2 K.B. 236, where, under the scheme applicable to her case, a widow had to be taxed by reference to her income for the year before, and her contention was that she had no income in that year and was accordingly not assessable, because, by r. 16, her profits, since she was in that year living with her husband, were to be deemed to be the profits of her husband. The Court of Appeal rejected that contention by holding that, although r. 16 provided that the profits of a married woman living with her husband were to be deemed to be the profits of the husband, yet that only meant for the purposes of collection and assessment, which did not prevent those profits from still being those of the wife for purposes of computation. So it was argued in the present case that the wife's profits did not arise or accrue to the husband within the meaning of the words in r. 18. He (his lordship) was unable to accept that contention. *Leitch* v. *Emmott* applied solely to the computation of tax. In the present case it was a question not of computation but of assessment on and collection from the executrix of tax which was assessable and chargeable on the husband by reason of r. 16. As to the second question he could see nothing in r. 18 which in any way suggested a limitation to the year of assessment. If the rule had been intended to be limited to the year of assessment it could quite simply have said so. As to the last question, *Cowdray* v. *Commissioners of Inland Revenue* (1930), 15 Tax Cas. 255, cited by the appellant, was not in point. Rule 18 entitled the Commissioners to assess the executrix on the profits which accrued to the testator *de die in diem* to the day of his death. The appeal must be dismissed.

COUNSEL: *J. M. Tucker*, K.C., and *J. S. Scrimgeour*, for the appellant; *The Solicitor-General* (Sir Terence O'Connor, K.C.) and *R. P. Hills*, for the Crown.

SOLICITORS: *Stephenson, Harwood & Tatham; Solicitor of Inland Revenue.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

The next General Quarter Sessions of the Peace for the Borough of Walsall will be held at the Guildhall, Walsall, on Thursday, 22nd July, at 10 o'clock in the forenoon.

Middlesex County Council *v.* Nathan.

du Parcq, J. 5th May, 1937.

POOR PERSON—EXPENSES OF MAINTAINING IN AN INSTITUTION—ACTION BY COUNTY COUNCIL TO RECOVER FROM SON OF POOR PERSON—NO PROOF THAT SON POSSESSED OF SUFFICIENT MEANS—LIABILITY—POOR RELIEF ACT, 1601 (43 Eliz., c. 2), s. 7—POOR LAW ACT, 1927 (17 & 18 Geo. 5, c. 14), s. 41 (1), 43 (2)—LOCAL GOVERNMENT ACT, 1929 (19 & 20 Geo. 5, c.), s. 16—POOR LAW ACT, 1930 (20 & 21 Geo. 5, c.), s. 14 (1).

Motion for judgment.

The facts of the case, as set out in the statement of claim, were as follows: The plaintiff council, under the powers conferred on them by the Public Health Acts, 1875 to 1926, and the Local Government Acts, 1888 and 1929, provided accommodation in the North Middlesex County Hospital, an institution within the meaning of s. 16 of the Local Government Act, 1929. The defendant was the legitimate son of one, Solomon Nathan, an old and poor person unable to work, who was, on the 6th June, 1936, admitted to the hospital for treatment for a condition which was not an infectious disease, and was maintained there by the plaintiffs until the 13th August, 1936. The plaintiffs had recovered from Solomon Nathan and one, Alfred Nathan, a person legally liable to maintain him, amounts totalling £1 9s. 8d. and £2 18s. 4d. respectively, out of total expenses amounting to £36 4s. 11d., and were satisfied that Solomon Nathan and Alfred Nathan could not reasonably, having regard to their financial circumstances, be required to pay the whole or any greater part of the expenses of maintaining Solomon Nathan in the hospital. The plaintiffs, contending that the defendant was at the material time a person legally liable to maintain Solomon Nathan, now claimed £31 16s. 11d. By s. 16 of the Local Government Act, 1929, a county council are obliged to recover from any person they have maintained in an institution, or from anyone "legally liable" to maintain that person, the whole of the council's expenses of maintenance, but the council may have regard to the financial means of the person from whom the expenses are recoverable.

DU PARCQ, J., said that s. 6 of the Act 43 Eliz., c. 2 was still in substance the law with regard to poor relief. Looking at the Poor Law Acts, 1927 and 1930, as at that of 43 Eliz., it would be wrong to say that every child of a poor, old, blind, lame and impotent person, or other poor person not able to work, was under a duty to relieve and maintain such a person. The Acts said no such thing. A necessary part of the description of the persons who came under the Acts of 1927 and 1930 was to be found in the words "if possessed of sufficient means" in s. 41 (1) of the former and s. 14 (1) of the latter Act, and there was no duty at all unless that provision was fulfilled. The words "person legally liable" in s. 16 of the Local Government Act, 1929, included a person liable by force of some statute. On the facts, the defendant was, he (his lordship) found, the son of a person who was poor and old and impotent within s. 14 (1) of the Act of 1930. By s. 163 of the Act, "'poor person' includes any poor or indigent person applying for or receiving relief." He (his lordship) would assume that, although there was no allegation that Solomon Nathan was entitled to receive relief, he still came within the class of persons mentioned in s. 14 (1) of the Act of 1930 on the ground that he was poor and old and unable to work. The defendant, therefore, was the child of one of those persons, and the question remained whether he was possessed of sufficient means. He (his lordship) was satisfied that, unless the council proved that the defendant had sufficient means, they did not bring him within the ambit of s. 16 of the Local Government Act, 1929, because they do not show him to be a person "legally liable." There was no allegation here that the defendant was possessed of sufficient means to pay anything, and on that ground the motion failed.

COUNSEL: *F. J. Wrottesley*, K.C., and *H. B. Williams*, for the plaintiffs; *R. M. Montgomery*, K.C. (*G. D. Squibb* with him), as *amicus curiæ*, for the defendants.

SOLICITOR: *C. W. Radcliffe*, Clerk to the Middlesex County Council.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Obituary.

LORD CRAIGMYLE.

Lord Craigmyle, formerly Lord Shaw of Dunfermline, a Lord of Appeal in Ordinary, died in Glasgow on Monday, 28th June, at the age of eighty-seven. He was admitted a member of the Faculty of Advocates in 1875, and became an Advocate-Depute in 1886. He took silk in 1894. He was elected Liberal member for Hawick Burghs in 1892, becoming Solicitor-General for Scotland in 1894 and Lord Advocate in 1905. In 1909 he was appointed a Lord of Appeal in Ordinary. He resigned in 1929, and received a peerage of the United Kingdom, taking the title of Lord Craigmyle. An appreciation appears at p. 537, of this issue.

SIR JOHN COUPER.

Sir John Couper, Writer to the Signet and Purse Bearer to the Lord High Commissioner to the General Assembly of the Church of Scotland, died at North Berwick, on Tuesday, 29th June, at the age of sixty-nine. He was educated at Winchester and Edinburgh University, and was admitted a Writer to the Signet in 1893. He received the honour of knighthood in 1930.

MR. J. H. SHAW.

Mr. James Herbert Shaw, formerly Chief Examiner of Titles in the Irish Land Commission, died at his home at Parkstone, Dorset, on Monday, 28th June. Mr. Shaw was educated at Eastbourne College and Trinity College, Dublin, and was called to the Irish Bar in 1883. He was Chief Examiner of Titles in the Irish Land Commission from 1903 until 1921, when he retired.

MR. F. E. FORSTER.

Mr. Frederick Edwin Forster, solicitor, a partner in the firm of Messrs. Keenlyside & Forster, of Newcastle-upon-Tyne, died at Newcastle, on Wednesday, 30th June. Mr. Forster was admitted a solicitor in 1884.

Parliamentary News.

Progress of Bills.

House of Lords.

Barnet District Gas and Water Bill.
Commons Amendments agreed to. [29th June.

Chairman of Traffic Commissioners, Etc. (Tenure of Office) Bill.
Read First Time. [24th June.

Cinematograph Films (Animals) Bill.
Read First Time. [30th June.

Cleethorpes Corporation (Trolley Vehicles) Provisional Order Bill.
Reported, without Amendment. [29th June.

Dunstable Gas and Water Bill.
Read Third Time. [29th June.

Factories Bill.
Read Second Time. [28th June.

Glasgow Streets, Sewers and Buildings Consolidation Order Confirmation Bill.
Read Third Time. [24th June.

Gosport Water Bill.
Reported, with Amendments. [29th June.

Hastings Corporation General Powers Bill.
Reported, with Amendments. [29th June.
Huddersfield Corporation Bill.
Read Third Time. [29th June.
Lancashire Electric Power Bill.
Reported, with Amendments. [29th June.
London County Council (Money) Bill.
Read Third Time. [24th June.
Marriage Bill.
Read Second Time. [28th June.
Marriages Provisional Orders Bill.
Reported, without Amendment. [29th June.
Methylated Spirits (Scotland) Bill.
Read Third Time. [28th June.
Ministers of the Crown Bill.
Read Third Time. [29th June.
Ministry of Health Provisional Order (Birmingham, Tame and Rea Main Sewerage District) Bill.
Read First Time. [29th June.
Ministry of Health Provisional Order Confirmation (Bridlington) Bill.
Reported, without Amendment. [30th June.
Ministry of Health Provisional Order Confirmation (Guildford) Bill.
Reported, without Amendment. [30th June.
Ministry of Health Provisional Order Confirmation (Rhymney Valley Sewerage District and Western Valleys (Monmouthshire) Sewerage District) Bill.
Reported, without Amendment. [30th June.
Ministry of Health Provisional Order Confirmation (Selby) Bill.
Reported, without Amendment. [29th June.
Ministry of Health Provisional Order Confirmation (South East Essex Joint Hospital District) Bill.
Amendments Made. [30th June.
Ministry of Health Provisional Order Confirmation (Tynemouth) Bill.
Reported, without Amendment. [29th June.
Ministry of Health Provisional Order (Halifax) Bill.
Read First Time. [28th June.
Ministry of Health Provisional Order (Hornsea) Bill.
Read First Time. [28th June.
Ministry of Health Provisional Order (Maidenhead Water) Bill.
Read Second Time. [30th June.
Ministry of Health Provisional Order (Sevenoaks Water) Bill.
Read Second Time. [30th June.
Ministry of Health Provisional Order (Tonbridge Water) Bill.
Read Second Time. [30th June.
Ministry of Health Provisional Order (Wisbech Water) Bill.
Read First Time. [29th June.
Ministry of Health Provisional Order (Yeadon Water) Bill.
Read First Time. [29th June.
Newcastle-upon-Tyne Corporation Bill.
Read First Time. [28th June.
Physical Training and Recreation Bill.
Read Second Time. [29th June.
Pier and Harbour Provisional Order (Culag (Lochinver)) Bill.
Read Second Time. [30th June.
Pier and Harbour Provisional Order (Falmouth) Bill.
Read Second Time. [30th June.
Pier and Harbour Provisional Order (Fowey) Bill.
Read Second Time. [30th June.
Post Office and Telegraph (Money) Bill.
Read First Time. [30th June.
Public Health (Drainage of Trade Premises) Bill.
Commons Amendments agreed to. [30th June.
Rochdale Corporation Bill.
Read Third Time. [29th June.
Sheppey Water Bill.
Commons Amendments Agreed to. [23rd June.
Staffordshire Potteries Water Board Bill.
Read Second Time. [24th June.
Teachers (Superannuation) Bill.
Read First Time. [30th June.
Walsall Corporation (Trolley Vehicles) Provisional Order Bill.
Reported, without Amendment. [29th June.
Widows', Orphans' and Old Age Contributory Pensions (Voluntary Contributors) Bill.
Read Third Time. [30th June.

House of Commons.

Ashdown Forest Bill.
Read Third Time. [25th June.
Banbury Waterworks Bill.
Reported with Amendments. [28th June.
Barnet District Gas and Water Bill.
Read Third Time. [24th June.
Canvey Island Urban District Council Bill.
Read Second Time. [28th June.
Cinematograph Films (Animals) Bill.
Read Third Time. [29th June.
Dartford Tunnel Bill.
Read Second Time. [28th June.
Eastbourne Extension Bill.
Reported, with Amendments. [24th June.
Exchange Equalisation Account Bill.
Read Second Time. [30th June.
Finance Bill.
In Committee. [30th June.
Hastings Pier Bill.
Read Third Time. [28th June.
Hydrogen Cyanide (Fumigation) Bill.
Read Second Time. [28th June.
Kent Electric Power Bill.
Amendments considered. [30th June.
Kingsbridge and Salcombe Water Board Bill.
Amendments considered. [28th June.
Liverpool United Hospital Bill.
Read Second Time. [28th June.
Local Government Superannuation Bill.
Reported, with Amendments. [24th June.
London and North Eastern Railway Bill.
Lords Amendments agreed to. [25th June.
London Midland and Scottish Railway Bill.
Lords Amendments agreed to. [24th June.
Ministers of the Crown Bill.
Lords Amendment agreed to. [30th June.
Ministry of Health Provisional Order (Birmingham, Tame and Rea Main Sewerage District) Bill.
Read Third Time. [28th June.
Ministry of Health Provisional Order (Halifax) Bill.
Read Third Time. [25th June.
Ministry of Health Provisional Order (Hornsea) Bill.
Read Third Time. [25th June.
Ministry of Health Provisional Order (Wisbech Water) Bill.
Read Third Time. [28th June.
Ministry of Health Provisional Order (Yeadon Water) Bill.
Read Third Time. [28th June.
National Trust for Places of Historic Interest or Natural Beauty Bill.
Read Third Time. [30th June.
Newcastle-upon-Tyne Corporation Bill.
Read Third Time. [25th June.
Newquay and District Water Bill.
Lords Amendments agreed to. [25th June.
Nigeria (Remission of Payments) Bill.
Read First Time. [29th June.
North Cotswold Rural District Council Bill.
Read Second Time. [28th June.
Pontypool Gas and Water Bill.
Amendments considered. [30th June.
Post Office and Telegraph (Money) Bill.
Read Third Time. [29th June.
Poultry and Poultry Products (Regulation of Imports) Bill.
Read First Time. [29th June.
Richmond (Surrey) Corporation Bill.
Lords Amendments agreed to. [24th June.
Taf Fechan Water Supply Bill.
Amendments considered. [28th June.
Teachers (Superannuation) Bill.
Read Third Time. [29th June.
Warrington Corporation Bill.
Amendments considered. [28th June.
Wessex Electricity Bill.
Amendments considered. [30th June.

Societies.

City of London Solicitors' Company.

The Twenty-eighth Annual Meeting of the City of London Solicitors' Company was held at the Guildhall on Wednesday, 9th June, the retiring Master, Mr. Anthony Pickford (City Solicitor), being in the chair. In moving the adoption of the report the Master referred to the losses sustained by the Company during the past year. They deeply regretted, he said, the passing of one of the founders and the first Master, Sir Homewood Crawford, a former City Solicitor. Sir William Leese, the Company's Hon. Solicitor, had also passed away, and Mr. Douglas Garrett had been elected to fill the vacancy. Eighteen new members had been elected during the year, and the total membership was now 250. He drew attention to the great success of the lecture given by Mr. Wilfred Dell on the New County Court Rules. Over 300 persons had

attended, which proved that that side of the Company's activities might be extended if good lecturers could be obtained. He suggested that the matter should receive further attention. The motion was seconded by Mr. H. S. Syrett, LL.B., C.C., and the report was adopted. A hearty vote of thanks was accorded to the Master. The following officers have been elected for the ensuing year:—Master, Mr. H. S. Syrett; Senior Warden, Mr. E. A. Rehder; Junior Warden, Mr. A. Hair.

The Union Society of London.

The Union Society of London held its Annual Dinner at Holborn Restaurant on Wednesday, 23rd June, the President, Mr. S. R. Lewis, being in the chair. Those who were present included The Hon. Mr. Justice Atkinson, Mr. D. N. Pritt, K.C., M.P., Mr. C. E. M. Joad, Mr. Patrick Anderson, President of the Oxford Union Society, Mr. D. F. Brundrit, Mr. D. W. Dobson (Hon. Treasurer), Mr. J. A. Grieves, Mr. C. R. Hurle-Hobbs, Mr. G. F. Kingham, Mr. D. W. A. Llewellyn, Mr. Salter Nichols, Mr. E. J. Rendle (Vice-President), Mr. A. D. Russell-Clarke, Mr. A. Ross, and Mr. J. M. Symmons.

The Hardwicke Society.

The President of the Hardwicke Society, Mr. J. A. PETRIE, took the chair at its Annual Ladies' Night Debate, held in the Inner Temple Hall, on the 22nd June. The hon. treasurer of the Society, Mr. G. E. LLEWELLYN THOMAS, proposed the motion: "That effective defence of the Empire must be based on a collective system."

Mr. THOMAS said that Imperial security was a subject of vital importance to every member of the British commonwealth of nations, and the foreign policy which Sir Norman Angell and he advanced must be followed if the Empire, civilisation, and political liberty were to be saved from utter disaster. The League of Nations had been criticised because it led to commitments and rival alliances. But commitments would have deterred Germany from declaring war in 1914, and the League was an instrument for creating one alliance alone in which all countries might join. Isolation was an alternative to collective security, but led to alliances, because as soon as one state made an alliance another state had to follow suit, and that led to war in the end. Imperialists were themselves as much to blame as anyone for imperilling the safety of the Empire. They had encouraged the dictators in every crisis since Japan invaded Manchuria. When Italy invaded Abyssinia we had imposed sanctions, but we had decided that we did not intend to go to war over Abyssinia. We had also decided that sanctions meant war. We had, therefore, taken sanctions off, and now Italy had 2,000 miles of territory against Somaliland, Kenya and the Sudan and a stranglehold on the Mediterranean. She guarded the back-door to the Suez Canal, and the key was in Mussolini's pocket. The British Empire was placed in jeopardy to-day because this country and France had not been prepared to honour their signatures to the Covenant.

Mr. LEONARD CAPLAN, opposing, said that the will-o'-the-wisp of collective security had been pursued almost since the dawn of civilised communities. The Amphictyonic League of ancient Greece, and William Penn's Parliament of the Nations were two examples. The former had been followed by three great wars, the latter had been but a dream. The real reason why collective security had failed in the past and would fail in the future was that it was easy enough to get nations to make promises but difficult to make them fulfil them. Nations would not submit to inimical judgments where their own interests were concerned except under threat of force or under force itself.

Sir NORMAN ANGELL maintained, for the motion, that if collective security was a failure because it was necessary to depend upon the undertakings of other nations, then any system of alliance whatever was also condemned. We must have alliances if we were to be defended at all, and we must, therefore, be able to depend upon the promises of others. The best way of making sure that those promises would be fulfilled was to make it clear that we would keep our promises to others and that we would fight for them. If our allies felt that they could not depend upon us they would fail us when we needed them. If defence consisted merely in piling up isolated power as such, it could not be an effective defence in the sense that it could not prevent war. Surely defence was not effective if war resulted?

Mr. L. S. AMERY, M.P., said that if abstract logic fortified by index figures could convince, Sir Norman Angell's case would be impossible to answer, but he feared that it bore but a very slender relation to the facts of a difficult and illogical world. The British Commonwealth of Nations should be the foundation of our defence. That was a collective security bound by tradition and community of interest, and not an arbitrary division governed by the balance of power. It was not correct to compare collective security with the policing of a state, for gangsters represented but an infinitesimal minority in a civilised state, whereas the world was full of gangster nations.

Sir NORMAN ANGELL, in reply, said that the coercive aspect of collective security had been criticised, but it asked only that there should be no aggression. If we defended ourselves against the state that attacked us, should we coerce that state? This was the only coercion involved in the principle of collective defence and mutual assistance.

On a vote being taken, the motion was carried by eighty-seven votes to sixty-five.

Rules and Orders.

THE HOUSING ACT, 1936 (OPERATION OF OVERCROWDING PROVISIONS) ORDER (No. 2), 1937, DATED JUNE 17, 1937, MADE BY THE MINISTER OF HEALTH UNDER THE HOUSING ACT, 1936 (26 GEO. 5 & 1 EDW. 8. c. 51).

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The Minister of Health, in exercise of his powers under Section 68 of the Housing Act, 1936 (hereinafter referred to as "the Act"), and of all other powers enabling him in that behalf, hereby makes the following Order:—

1. In relation to the areas which are specified in the Schedule to this Order the appointed day for the purposes of Section 62 of the Act (which provides for entry in rent books or similar documents of a summary in the prescribed form of certain provisions of the Act relating to overcrowding) shall be the first day of July, 1937, and the appointed day for the purposes of Sections 59 and 64 (which contain provisions as to offences in relation to overcrowding) and Section 60 and sub-section (2) of Section 6 of the Act shall be the first day of January, 1938.

2. This Order may be cited as the Housing Act, 1936 (Operation of Overcrowding Provisions) Order (No. 2), 1937.

SCHEDULE.

AREAS TO WHICH THIS ORDER APPLIES.

I.—METROPOLITAN BOROUGHS.

Hampstead, Holborn, Paddington, Saint Marylebone, Saint Pancras, Southwark.

II.—COUNTY BOROUGHS.

Barnsley, Birmingham, Bradford, Bristol, Dewsbury, Huddersfield, Plymouth, Southampton, Walsall, Wolverhampton.

III.—COUNTY DISTRICTS.

County of Chester.

Borough of:—Congleton.

County of Derby.

Borough of:—Buxton.

Urban Districts of:—Alfreton, Belper, Clay Cross.

County of Monmouth.

Urban Districts of:—Rhymney, Tredegar.

County of Salop.

Borough of:—Wenlock.

Urban District of:—Dawley.

County of Stafford.

Borough of:—Wednesbury.

County of York, West Riding.

Boroughs of:—Batley, Brighouse, Morley, Ossett.

Urban Districts of:—Heckmondwike, Normanton, Spenborough, Stanley.

County of Anglesey.

Urban District of:—Holyhead.

County of Flint.

Rural Districts of:—Hawarden, Holywell.

Given under the official seal of the Minister of Health this seventeenth day of June nineteen hundred and thirty-seven.

(L.S.) *E. D. Macgregor,*
Assistant Secretary,
Ministry of Health.

THE CHANCERY OF LANCASTER RULES (No. 1) 1937. DATED JUNE 15, 1937. [S.R. & O., 1937, No. 552/L.10. Price 1d. net].

[NOTE.—The Provisional Chancery of Lancaster Rules (No. 1) 1937, which were published in our issue of the 1st May (81 SOL. J. 362), have now been superseded by Final Rules which came into force on the 24th June last. The main body of the new Rules is identical with that published in our issue above referred to.—ED., *Sol. J.*]

Legal Notes and News.

Honours and Appointments.

The King has been pleased to approve a recommendation of the Home Secretary that Mr. CYRIL ASQUITH, K.C., be appointed Recorder of Salisbury, to succeed the late Mr. T. H. Parr, K.C. Mr. Asquith was called to the Bar by the Inner Temple in 1920, and took silk last year.

The King has approved the appointment of Mr. NEIL ADAM MACLEAN, K.C., to be Sheriff-Substitute of Argyll at Dunoon, in place of Mr. James Bell Ballingall, Advocate, resigned.

The Board of Trade have appointed Mr. GEORGE STOGDALE ROBINSON to be Official Receiver for the Bankruptcy District of the County Court, holden at Leicester, with effect from the 1st July, 1937, in the place of Mr. Evan Barlow.

Croydon Borough Council has appointed its Deputy Town Clerk, Mr. ERNEST TABERNER, to the position of Town Clerk, in succession to Dr. J. M. Newnham, who retires in October. Mr. Taberner was admitted a solicitor in 1927.

Mr. J. H. MOORE DUTTON has been appointed Clerk to the Tarvin Rural District Council. Mr. Dutton was admitted a solicitor in 1925.

Mr. JARED EWART DIXON, Solicitor to the East Riding County Council, has accepted the appointment of Deputy Town Clerk of Bath. Mr. Dixon was admitted a solicitor in 1930.

Mr. JOSEPH WARING, of Hull, Solicitor and Financial Secretary to the River Hull Catchment Board, has been appointed Clerk and Solicitor to the Easington Rural Council, Durham. Mr. Waring was admitted a solicitor in 1926.

Notes.

Messrs. Slaughter & May, solicitors, of Austin Friars, E.C.2, have taken into partnership Mr. C. H. Scott, who has been associated with them for some years past.

The Treasurer, Mr. Justice Clauson, and Masters of the Bench, gave a garden party in the gardens of Lincoln's Inn, on the 24th June. The Duke of Kent, the senior Bencher, was present, accompanied by the Duchess of Kent.

A tour of Somerset House will be made on Wednesday, 7th July, in aid of King Edward's Hospital Fund for London. The tour will be conducted by Mr. W. L. Rind, O.B.E. Further particulars may be obtained from the Secretary, King Edward's Hospital Fund for London, 10, Old Jewry, E.C.2.

Members of the Law and City Courts Committee and the Corporation of the City of London gave a dinner in the Art Gallery and Guildhall last Tuesday in honour of their former Chairman, Mr. A. E. Watts, to whom a presentation was made. Mr. C. R. Algar, the Chairman of the Committee, presided. The Lord Chief Justice proposed the Civic toast, and the Lord Mayor replied.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.	EMERGENCY ROTA.	APPEAL COURT No. 1.	GROUP II. MR. JUSTICE CLAUSON. Witness Part I.	GROUP II. MR. JUSTICE LUXMOORE. Non-Witness
	Mr.	Mr.	Mr.	Mr.
July 5	Ritchie	Hicks Beach	*Jones	Blaker
,, 6	Blaker	Andrews	*Ritchie	More
,, 7	More	Jones	*Blaker	Hicks Beach
,, 8	Hicks Beach	Ritchie	More	Andrews
,, 9	Andrews	Blaker	Hicks Beach	Jones
,, 10	Jones	More	Andrews	Ritchie

DATE	GROUP II. MR. JUSTICE FARWELL. Witness Part II.	MR. JUSTICE BENNETT. Non-Witness.	GROUP I. MR. JUSTICE CROSSMAN. Witness Part I.	MR. JUSTICE SIMONDS. Witness Part II.
	Mr.	Mr.	Mr.	Mr.
July 5	*Ritchie	Andrews	*More	Hicks Beach
,, 6	*Blaker	Jones	*Hicks Beach	Andrews
,, 7	*More	Ritchie	*Andrews	Jones
,, 8	*Hicks Beach	Blaker	*Jones	Ritchie
,, 9	*Andrews	More	*Ritchie	Blaker
,, 10	Jones	Hicks Beach	Blaker	More

*The Registrar will be in Chambers on these days, and also on the days when the Court is not sitting.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 8th July, 1937.

	Div. Months.	Middle Price 30 June 1937.	Flat Interest Yield. £ s. d.	‡ Approximate Yield with redemption £ s. d.
ENGLISH GOVERNMENT SECURITIES				
Consols 4% 1957 or after	FA	106¼xd	3 15 3	3 11 2
Consols 2½%	JAJO	74½	3 7 1	—
War Loan 3½% 1952 or after	JD	99¾	3 10 2	—
Funding 4% Loan 1960-90	MN	109½	3 13 1	3 7 11
Funding 3% Loan 1959-69	AO	93	3 4 6	3 7 3
Funding 2¾% Loan 1952-57	JD	90	3 1 1	3 9 0
Funding 2½% Loan 1956-61	AO	85¼	2 18 8	3 8 2
Victory 4% Loan Av. life 22 years	MS	108¼	3 13 11	3 9 3
Conversion 5% Loan 1944-64	MN	112	4 9 3	2 18 8
Conversion 4½% Loan 1940-44	JJ	105½	4 5 4	2 11 5
Conversion 3½% Loan 1961 or after	AO	99¾	3 10 2	—
Conversion 3% Loan 1948-53	MS	98	3 1 3	3 3 2
Conversion 2½% Loan 1944-49	AO	95¼	2 12 6	2 19 6
Local Loans 3% Stock 1912 or after	JAJO	85½	3 10 2	—
Bank Stock	AO	339½	3 10 8	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	75	3 13 4	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	84	3 11 5	—
India 4½% 1950-55	MN	111	4 1 1	3 8 8
India 3½% 1931 or after	JAJO	89½	3 18 3	—
India 3% 1948 or after	JAJO	75½	3 19 6	—
Sudan 4½% 1939-73 Av. life 27 years	FA	111	4 1 1	3 16 10
Sudan 4% 1974 Red. in part after 1950	MN	109	3 13 5	3 2 11
Tanganyika 4% Guaranteed 1951-71	FA	109½	3 13 1	3 2 11
L.P.T.B. 4½% "T.F.A." Stock 1942-72	JJ	106	4 4 11	3 0 6
Lon. Elec. T. F. Corpn. 2½% 1950-55	FA	89	2 16 2	3 5 9
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	103	3 17 8	3 15 5
Australia (Commonw'th) 3% 1955-58	AO	88	3 8 2	3 16 11
Canada 4% 1953-58	MS	109	3 13 5	3 5 5
*Natal 3% 1929-49	JJ	99	3 0 7	3 2 3
*New South Wales 3½% 1930-50	JJ	96	3 12 11	3 18 0
New Zealand 3% 1945	AO	94	3 3 10	3 18 11
Nigeria 4% 1963	AO	110	3 12 9	3 8 4
*Queensland 3½% 1950-70	JJ	96	3 12 11	3 14 4
South Africa 3½% 1953-73	JD	101	3 9 4	3 8 4
*Victoria 3½% 1929-49	AO	97	3 12 2	3 16 4
CORPORATION STOCKS				
Birmingham 3% 1947 or after	JJ	87	3 9 0	—
Croydon 3% 1940-60	AO	96	3 2 6	3 5 0
*Essex County 3½% 1952-72	JD	102	3 8 8	3 6 8
Leeds 3% 1927 or after	JJ	85½	3 10 2	—
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	99	3 10 8	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	72	3 9 5	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	84	3 11 5	—
Manchester 3% 1941 or after	FA	86	3 9 9	—
Metropolitan Consd. 2½% 1920-49	MJSD	94	2 13 2	3 2 2
Metropolitan Water Board 3% "A" 1963–2003	AO	87½	3 8 7	3 9 9
Do. do. 3% "B" 1934-2003	MS	88½	3 7 10	3 8 10
Do. do. 3% "E" 1953-73	JJ	93½	3 4 2	3 6 3
*Middlesex County Council 4% 1952-72	MN	108	3 14 1	3 6 2
* Do. do. 4½% 1950–70	MN	113	3 19 8	3 5 3
Nottingham 3% Irredeemable	MN	85½	3 10 2	—
Sheffield Corp. 3½% 1968	JJ	102	3 8 8	3 7 11
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture	JJ	105¼xd	3 15 10	—
Gt. Western Rly. 4½% Debenture	JJ	117½xd	3 16 7	—
Gt. Western Rly. 5% Debenture	JJ	128½xd	3 17 10	—
Gt. Western Rly. 5% Rent Charge	FA	127½xd	3 18 5	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	126	3 19 4	—
Gt. Western Rly. 5% Preference	MA	117½	4 5 1	—
Southern Rly. 4% Debenture	JJ	103½	3 17 4	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	108½	3 13 9	3 9 9
Southern Rly. 5% Guaranteed	MA	127	3 18 9	—
Southern Rly. 5% Preference	MA	116½	4 5 10	—

*Not available to Trustees over par.
‡In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.

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Stock

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7	3
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8	2
9	3
18	8
11	5
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3	2
19	6
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8	8
—	
—	
16	10
2	11
2	11
0	6
5	9
15	5
16	11
5	5
2	3
18	0
18	11
8	4
14	4
8	4
16	4
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